



Who Is the Declarant of the English Translation of the Defendant's Out-of-Court Foreign Language Statement? An "Authenticated Conduit Theory"

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Who Is the Declarant
of the English Translation
of the Defendant's Out-of-Court Foreign Language Statement?
An "Authenticated Conduit" Theory

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A Thesis in the Field of Legal Studies
for the Degree of Master of Liberal Arts in Extension Studies

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Abstract

This thesis contends that the declarant of the English-language translation of an LEP suspect's out-of-court testimony "must" become no one else but the suspect, not by making the interpreter the suspect's "agent" through the application of FRE 801(d)(2)(C) or (D), but by ensuring that every interpreter passes muster as a true "language conduit" to enable the application of FRE 801(d)(2)(A).

The "agent-and-conduit interpreter" theory is a dominant U.S. case law that has dealt with the hearsay issue of an interpreter-assisted extrajudicial testimonial statement. To enable the application of "a party opponent's vicarious admission" stipulated by FRE 801(d)(2)(C) or (D), the theory claims that when two parties begin an interpreter-assisted conversation, the interpreter becomes a "dual agent" for both parties, who presume that the interpreter is acting as a language "conduit" with *prima facie* accurate translations. This hybrid legal theory of the traditional agency law and a 20th-century legal fiction about a foreign-language interpreter, however, embodies critical logic dilemmas, especially faced with the renewed Confrontation Clause challenge from *Crawford*.

The thesis, comprising two main research results: a legal research and a forensic-linguistic research, calls for a complete overhaul of the "agent-and-conduit" theory used for the application of FRE 801(d)(2)(C) or (D), by maintaining that it be replaced by a new implementation of the 21st-century-style "authenticated conduit" measure that will enable the application of FRE 801(d)(2)(A) instead.

In Part I: Legal Research, the thesis demonstrates that no "agency relationship" takes place between the suspect and the interpreter in a police interview for the reason

that the suspect neither consents to it nor controls the interpreter. The thesis further argues that imposition on the suspect of any such consent to an assumed agency relationship with an interpreter will violate the suspect's "non-waivable" Fifth Amendment due process right against "potential verballing." The thesis then advocates a realization of a "true conduit" that will enable the application of FRE 801(d)(2)(A), by exerting 21st-century technological and intellectual resources that are becoming increasingly advanced, accessible, and available. Also, to attest to the adequacy of attaining a "true conduit," the thesis demonstrates that the "true conduit" notion is also in harmony with the doctrine of the copyright law on the protectible elements of the original copyright that continue to exist in its translation. To achieve the "true conduit," the thesis calls for mandatory introduction of video recording of interpreter-assisted custodial police interviews and mandatory authentication of the interpreter's translation accuracy by a certified court interpreter who will also act as an expert witness.

Part II: Forensic-Linguistic Research is an empirical substantiation for Part I, in the form of an action-study analysis, using an authentic recording of a custodial police interview with a Dari interpreter. The thesis demonstrates that though there are certain ways, such as turn-taking cycles, rendition and pause time comparisons, monolingual extra round-trips, etc., by which monolingual parties (the police and the suspect) in a police interview can assess the interpreter's accuracy and reliability, there is a maximum limit to such indirect accuracy confirmation without a complete check-translation. The research empirically demonstrates that an authenticated check translation is absolutely crucial for fact-triers' determination of the interpreting accuracy and impartiality, a result that strongly supports not only the introduction of digital recording but also mandatory production of an authenticated complete transcript of such check translation.

Dedication

I cordially and gratefully dedicate this thesis to Yatsu Itabashi, my long late grandmother in heaven, and Yoshiko Ota, my 82-year-old mother, both of whom together have raised me and, despite their constantly limited resources, have always granted me every possible learning opportunity I aspired for with everlasting support and encouragement. My learning is forever indebted to their immeasurable love, courage, and effort.

This thesis is also dedicated to my devoted husband, Kenji Ito, who, despite his unbelievably demanding work as a urologist and a dialysis physician in a disaster-stricken Fukushima hospital, has always given me and my work his immense emotional and spiritual support.

Lastly, this thesis is also dedicated to all the hard-working interpreting trainees whom I have taught, am teaching, and will be teaching, and who will continue to give me great joy, happiness, and inspiration for a better global community of tomorrow.

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I wish to extend my deepest, heartfelt gratitude to my thesis director Professor Scott Brewer of Harvard Law School, who, despite the distance of halfway around the globe, provided me with his time and insight into the fundamental legal analysis framework for the “interpreter-as-an-agent” theory and the Federal Rules of Evidence, and guided me with a focal point on “agency,” “bias,” and “expert,” which has been an immense help in shaping the thesis’ legal analysis. Without Professor Brewer’s help and guidance, the thesis could not have reached its conclusions the way it has.

My wholehearted, profound appreciation also goes to Professor Don Ostrowski, my ALM thesis advisor at Harvard Extension School, who, over a period of more than two years, has given me truly extensive help, support, and encouragement, starting from the initial thesis proposal-making stage all the way to the final, detailed editing work. Without Professor Ostrowski’s continuous help and guidance, the production of this thesis would have been impossible.

My final words of deepest gratitude are extended to all my professors and the staff of the ALM Program of Harvard Extension School, who have supported me and helped me to gain most valuable knowledge and insights, which directly and indirectly have contributed to the formation of this thesis, through direct communication on the Harvard campus and via state-of-the-art Internet technology halfway around the world.

With all the help I have received, I am, as the author of this thesis, solely responsible for all the ideas, arguments, facts and data, and their analyses presented in this thesis, including any possible, though not intended, errors and mistakes.

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Introduction

The U.S. circuit courts are currently split on their interpretation of “interpreters.” When a law enforcement officer interviews a suspect who has limited English language proficiency, a foreign language interpreter is hired to translate both parties’ statements back and forth so the officer and the suspect can communicate with each other. The officer records the suspect’s statements given in the form of English language translations rendered by the interpreter. When the trial begins, the officer testifies in court to what the defendant stated during this “out-of-court” police interview. This is when the big question arises. Who exactly is the declarant of the statement this police officer is now testifying to in court?

If the answer is “the defendant,” then the police officer is simply testifying to the defendant’s own previously made statement, which raises no hearsay issue in court.¹ This is the position that has been taken by the majority. These circuits maintain that the interpreter, who is a mere “language conduit,” serves as the defendant’s “agent” during the police interview, and that, therefore, according to the Federal Rules of Evidence 801(d)(2)(C) or (D),² the interpreter’s statement becomes the defendant’s own

¹ The Federal Rules of Evidence 801(d)(2) stipulates five “non-hearsay” categories in which a statement such as this one is attributed to the party opponent (“the defendant” in this case) and thus does *not* become hearsay.

² The Federal Rules of Evidence 801(d)(2) stipulates that a statement made by a party opponent is not hearsay if: (C) it “was made by a person whom the party authorized to make a statement on the subject”; or (D) it “was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed.” Thus, “801(d)(2)(C)” and “801(d)(2) (D)” are often combined as “801(d)(2)(C) or (D)” to refer to a hearsay exception using the “agent theory.”

statement,³ making the defendant the declarant of the English-language statement rendered by the interpreter.

In 2013, however, the Eleventh Circuit adjudicated that the police officer was only testifying to the English-language statement made by the interpreter, which was a translation of what the defendant had told the interpreter in the original language, and that, therefore, the interpreter, not the defendant, was the declarant of the English-language statement that the police officer testified to in court.⁴ The Eleventh Circuit thus ruled that this police officer's testimony was inadmissible hearsay, and that by not subpoenaing the interpreter to be cross-examined by the defendant, the lower court had violated the defendant's Confrontation Clause right⁵ that had been guaranteed by the Supreme Court's 2004 ruling of *Crawford v. Washington*.⁶

The two main issues that Judge Barkett addressed in *Charles* were the same as what Judge Berzon of the Ninth Circuit had expressed the previous year as a concern in her concurrence in *United States v. Orm Hieng*.⁷ First, preempting a hearsay issue using the "agent-and-conduit theory" is no longer reconcilable with the *Crawford*'s Confrontation Clause jurisprudence, which, in no uncertain terms, has ruled that the only way to test the reliability of any testimonial statement is through cross-examination.

³ Major rulings which have taken this position are: *United States v. Ushakow*, 474 F2d 1244 (9th Cir. 1973); *United States v. Da Silva*, 725 F2d 828 (2d Cir. 1983); *United States v. Koskerides*, 877 F2d 1129 (2d Cir. 1989); *United States v. Nazemian*, 948 F2d 522 (9th Cir. 1991); and *United States v. Orm Hieng*, 679 F3d 1131 (9th Cir. 2012).

⁴ *United States v. Charles*, 722 F.3d 1319 (11th Cir. 2013), 1324.

⁵ *United States v. Charles*, *id.*, 1331.

⁶ *Crawford v. Washington*, 541 U.S. 36 (2004).

⁷ *United States v. Orm Hieng*, 679 F3d 1131 (9th Cir. 2012), 5086, 5092-5093.

Second, as long as interpreting involves each interpreter's linguistic judgment, which is even less scientific (and thus less objective) than forensic laboratory tests,⁸ there always exists a *prima facie* suspicion about accuracy and reliability of each translation, which can also be verified only through cross-examination.

In view of the fact that LEP (Limited Language Proficiency) suspects' due process rights are so often violated during police interviews by the lack of access to reliable language assistance,⁹ the opinion presented by Judge Berzon and the ruling entered by Judge Barkett with the invocation of the *Crawford's* Confrontation Clause definitely deserves high credit. At the same time, however, as a long-time interpreting and translation professional,¹⁰ the author of this thesis could not help but feel very strange about an interpreter being regarded as someone who renders a statement in the target language that is deemed "*not identical*" to the client's original statement in the source language, as interpreters' work is nothing but rendition of an "equivalent meaning" in the target language. If we are not doing that, then what are we doing? This "gut-level" reaction was what prompted the author to conduct a comprehensive legal-linguistic analysis of this very issue.

⁸ *United States v. Charles, id.*, 1328-1329.

⁹ Roseann Dueñas González, et al. emphasizes in *Fundamentals of Court Interpretation: Theory, Policy, and Practice*, 2nd ed. (Durham, NC: Carolina Academic Press, 2012) that "this critical juncture in the criminal justice system represents a ['no man's land'] for LEP suspects—devoid of appropriate language policies and professional interpreting practices," 444.

¹⁰ The author of this thesis is a Japanese-government-certified interpreter and guide, who has also taught Japanese-English interpreting and translation skills for twenty-five years at specialized interpreter training institutes as well as universities both at graduate and undergraduate levels, all in Tokyo, Japan.

Part One: Legal Analysis

Chapter I

The “Agent-and-Conduit Interpreter” Theory Requires a Complete Overhaul

The “interpreter-as-an-agent-and-a-conduit theory” (“agent-and-conduit theory” hereafter) is a hybrid of the “interpreter-as-an-agent theory” (“agency theory” hereafter) and the “interpreter-as-an-conduit theory” (“conduit theory” hereafter). The “agency theory” is a uniquely American legal invention that applied the traditional agency law’s vicarious admission to an interpreter-assisted extrajudicial testimony, while and the “conduit theory” is a post-World War II legal fiction many jurisdictions in the world began to employ to cope with the accelerating linguistic diversity in criminal justice administration.

A. Recent Inter-Circuit Appellate Split

The origin of the “agency theory” can be traced back to 1773,¹¹ though the “conduit theory” appeared in U.S. courts only from 1973.¹² During the *Roberts*’¹³ era of “indicia of reliability,” the “agency theory” was combined with the “conduit theory”

¹¹ *Fabrigas v. Mostyn*, 20 Howell’s State Trials 82-238, 123 (England 1773), a trial that took place in 1773-1774 in London. A detailed explanation will be given in B-1, *infra*.

¹² *United States v. Ushakow*, 474 F2d 1244 (9th Cir. 1973).

¹³ *Ohio v. Roberts*, 448 U.S. 56 (1980).

and became the “dual agency conduit theory” (“agent-and-conduit theory”) in 1983,¹⁴ and since then has continued to rule as a dominant case law in the U.S.

1. “Agent-and-Conduit-Interpreter Theory” for FRE 801(d)(2)(C) or (D)

The “agent-and-conduit theory” enables the application of FRE 801(d)(2)(C) or (D) “vicarious admission” to make the interpreter’s extrajudicial translation “non-hearsay,” which enables the circumvention of the hearsay issue of an interpreter-assisted extrajudicial testimonial statement made by the suspect and also pre-empts the *Crawford*’s Confrontation Clause issue.

2. Judge Berzon’s Concern, Judge Barkett’s Courage, and the Supreme Court’s Silence

Seven years after *Crawford*, the Ninth Circuit still continued to use the same “agent-and-conduit theory” for the *Orm Hieng*¹⁵ ruling. However, one member of the panel, Judge Berzon, expressed a grave concern about the continued application of the “agent-and-conduit theory” in the era of *Crawford* and its progeny, saying that *Orm Hieng* relied on the pre-*Crawford*¹⁶ hearsay and Confrontation Clause analysis, which, in her view, created a great tension with *Melendez-Diaz v. Massachusetts*¹⁷ or *Bullcoming v. New Mexico*,¹⁸ when translation is “much less of a science than lab

¹⁴ *United States v. Da Silva*, 725 F2d 828 (2d Cir. 1983).

¹⁵ *United States v. Orm Hieng*, 679 F3d 1131 (9th Cir. 2012).

¹⁶ *Crawford v. Washington*, 541 U.S. 36 (2004).

¹⁷ *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

¹⁸ *Bullcoming v. New Mexico*, 564 U.S. ____ (2011).

tests.”¹⁹

Then, one year after the Ninth Circuit’s *Orm Hieng* ruling, the Eleventh Circuit, for the first time in the U.S. ruled in *Charles* that the application of the “agent-and-conduit theory” for FRE 801(d)(2) or (D), and *not* for FRE 801(d)(2)(A), was an attestation that the interpreter and the suspect were deemed as two different, separate identities, i.e., “separate declarants,”²⁰ and that, therefore, *Crawford* required that the interpreter be cross-examined.

In the wake of this emerging inter-circuit split, however, the U.S. Supreme Court has persistently conveyed a silent message to this issue by continuously denying certiorari in all cases that specifically addressed this issue.²¹ Thus, the law continues to remain uncertain.

¹⁹ “[T]hat a translator’s out-of-court version of a testimonial statement need not be subject to cross-examination at trial—seems in great tension with the holdings of *Melendez-Diaz v. Massachusetts*... (2009)...and *Bullcoming v. New Mexico*... (2011), that laboratory reports may not be admitted without testimony by the individuals who conducted the laboratory tests. Translation from one language to another is much less of a science than conducting laboratory tests, and so much more subject to error and dispute. Without the ability to confront the person who conducted the translation, a party cannot test the accuracy of the translation in the manner in which the Confrontation Clause contemplates” (in her concurring opinion), *Orm Hieng*, *id.*, 1147.

²⁰ “While *Alvarez* and *Da Silva* hold admissible, under the hearsay rules, a witness’s testimony of an interpreter’s out-of-court statements of what the defendant said, neither case holds that the defendant is the declarant of the interpreter’s statements,” *Charles*, *id.*, 1326.

²¹ The Supreme Court has denied certiorari in the following cases, which addressed this very issue: *Cassidy v. State*, 149 S.W.3d 712 (Tex. App. 2004); *United States v. Orm Hieng*, 679 F.3d 1131 (9th Cir. 2012); *United States v. Romo-Chavez*, 681 F.3d 955 (9th Cir. 2012); *United States v. Santacruz*, 480 Fed. Appx. 441 (9th Cir. 2012); *United States v. Desire*, 502 Fed. Appx. 818 (11th Cir. 2012); *United States v. Boskovic*, 472 Fed. Appx. 607 (9th Cir. 2012); *United States v. Budha*, 495 Fed. Appx. 452 (5th Cir. 2012); *United States v. Shibin*, 722 F.3d 233 (4th Cir. 2013).

B. “Agency Theory”: Obscure Origin and Stretched Application

Fabrigas v. Mostyn,²² a 1773 ruling that took place in London, is allegedly the original authority that dates back to the pre-Revolutionary-War time.

1. The “Agency Theory”: Origin and Early Development

Strangely, however, *Fabrigas* never mentions “agency relationship” in its entire 158-page-long court record.²³ On the contrary, far from mentioning “agency,” *Fabrigas* ironically and very vividly reveals a classic problem of an interpreter-assisted, out-of-court testimonial statement, by demonstrating an unfortunate confusion and very possible misunderstanding that seemed to have taken place during the series of interpreter-assisted out-of-court exchanges, which the judge and the jury were unable to verify due to the absence of the two interpreters as in-court witnesses.²⁴

The court could not ascertain whether the plaintiff (*Fabrigas*)’s original expression in the Minorquin language (“a mixture a of Italian and Spanish” or “a kind of bad Spanish”) had meant that *Fabrigas* would come back the next day “with one hundred and fifteen men” or that he would come back “with a petition backed by one hundred and fifty men.” Also, the court had no way of finding what kind of corresponding

²² *Fabrigas v. Mostyn*, 20 Howell’s State Trials 82-238, 123 (England 1773), a trial that took place in 1773-1774 in London. *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Present Time, with Notes and Other Illustrations*, Compiled by T. B. Howell, Esq. F. R. S. F. S. A., Volume XX. A. D. 1771-1777 (London: Printed by T. C. Hansard, Peterborough-Court, Fleet-Street, 1814), 82-238.

²³ *Fabrigas* only contains one short sentence by Justice Gould, who admitted an interpreter- assisted, out-of-court testimony, saying “I think it is very clearly sufficient evidence.” The reason mentioned, however, was that the subsequent event was not contradictory to the content of translation. Justice Gould never uses the word “agent” to describe the interpreter. *Fabrigas, id.*, 123.

²⁴ *Fabrigas, id.*, 125-126, 128, and 169.

translations the two interpreters, John Vedall and Segui, had rendered to the defendant at that time. Consequently, the court felt that the defendant might not have understood (or might have just misunderstood) the meaning of the interpreters' translated renditions, and as a result might have overreacted to the situation, thinking that Fabrigas might be planning a sedition. Such information, the judge said, could have greatly helped clarify this case for the jury, while that was not possible as the two interpreters never took the witness stand.²⁵

In 1865, more than a hundred years after *Fabrigas*, the first case in the U.S. that used the "agent theory" was ruled in Massachusetts. *Camerlin v. Palmer Co.*²⁶ determined that the "interpreter" had been an "agent" of the plaintiff (Mrs. Camerlin, the then forlorn wife of Mr. Camerlin, who later sued Palmer Co.), for the reason that Mrs. Camerlin herself had asked the interpreter to accompany her to communicate with the defendant. The defendant testified to what he had heard from the interpreter as to what the plaintiff's wife was saying to him at that time. *Camerlin* ruled that the interpreter had acted as "the plaintiff's wife's agent" in communicating with the defendant, citing *Fabrigas* as authority in order to newly invent the "interpreter-as-an-agent theory."²⁷

Then a few decades later in 1892 in the same state of Massachusetts,

²⁵ *Fabrigas*, *id.*, 125-126, 128, and 169.

²⁶ *Camerlin v. Palmer Co.*, 92 Mass. (10 Allen) 539 (1865).

²⁷ In *Camerlin*, a discrepancy appeared between what the defendant testified as to what he had heard from the plaintiff's wife through her interpreter and what the plaintiff's wife and her interpreter insisted had been communicated to the defendant. *Camerlin* ruled that since the interpreter, employed by the plaintiff's wife, had become her agent, what the defendant had heard through this interpreter had "to be taken" as what had been "truly stated," because "in such case the interpreter is an accredited agent of the party, acting within the scope of his authority," and somehow the authority the court cited for this new "agency theory" was Justice Gould's statement in *Fabrigas* that "the evidence of the witness was clearly admissible," which had never mentioned "agency relationship." *Camerlin v. Palmer Co.*, *id.*, 541-542.

*Commonwealth v. Vose*²⁸ used the “interpreter-as-a-joint-agent theory” for the first time. *Vose* ruled that the interpreter had acted as a “joint agent” between the defendant and the victim and provided “*prima facie* accurate” translation, using the following logic.

When two parties adopt a mode of communication through an interpreter, accuracy is assumed and the interpreter’s words “presumptively” become the parties’ own words, and so the parties cannot complain if the interpreter’s words are taken as their own. The only condition for this is that the two parties’ respective relations to the interpreter do not differ. As to whether the principals become liable for the agent (interpreter)’s faulty translations, *Vose* only mentioned that such discussion was not necessary in this particular case.²⁹

2. *Vose* Misapplied *Respondeat Superior* to Interpreter Users

This logic of *Vose*, which misused the old common law doctrine of *respondeat superior* to conceal the issue of “interpreter-assisted out-of-court statement,” became the origin of the many problems that have persisted even into the 21st century. While misapplying the common-law agency theory’s *respondeat superior* doctrine to preempt potential translation inaccuracy problems, *Vose* shifted “liability for inaccurate translation” to the users of the interpreting service by making them the principals of the agent (the interpreter), and thus making the traditional “agency determination criteria” almost non-existent.

²⁸ *Commonwealth v. Vose*, 157 Mass 393 (32 NE 355) (1892).

²⁹ “How far either would be bound by it if the interpreter should prove false, may depend on a variety of circumstances which it is unnecessary in this case to consider,” *Commonwealth v. Vose, id.*, 395.

For the establishment of an agency relationship, *Vose* only required that “the two parties adopt a mode of communication through an interpreter.” Such a simple requirement would automatically include any and all interpreter-assisted bilateral talk, because almost all interpreter-assisted bilateral talks take the following steps: 1) Party X needs to talk to Party Y, but Party Y and Party X speak different languages; 2) Party X needs an interpreter to accompany him if he decides to talk to Party Y; 3) Party X procures an interpreter—here, the interpreter *may* become Party X’s *agent*; 4) Party X goes to Party Y with this interpreter and starts talking to Party Y through this interpreter; 5) Party Y responds to Party X through Party X’s interpreter.

According to *Vose*, at the very moment of step 5), Party X’s interpreter automatically becomes Party Y’s *agent* as well, making Party Y liable, as the interpreter’s *co-principal*, for any up-coming translation inaccuracy, by requiring Party Y to accept any potentially inaccurate translation as Party Y’s own words. In short, *Vose* failed to make a distinction between: a) an act of “willingly, knowingly, and voluntarily” appointing an interpreter as one’s agent; and b) an act of “merely responding” to the other party who initiated a verbal exchange, through the initiating party’s interpreter.

Vose uses a typical “answer-begging,” faulty logic to “guarantee accuracy” by “presuming accuracy.” To rephrase the above-mentioned steps, the logic of *Vose* goes as follows. A party who responds to another party that initiated a talk through an interpreter automatically becomes a co-principal of the other party’s interpreter, and this interpreter automatically becomes a co-agent for both parties. As this interpreter has become a co-agent, the interpreter’s translation will become “presumptively accurate” for the two co-principals, because the two co-principals accept all the upcoming

translation as “*prima facie* correct,” and they will not, or will not be allowed to, challenge the translations’ accuracy by cross-examining the interpreter, because that would be the same as cross-examining themselves. Would such logic be readily acceptable to any reasonable mind?

3. *Vose* Kept Gaining Authority: “Dual Agency” for Police and Suspect

Despite this problematic logic, *Vose*’s “agency theory” kept gaining increasing authority in the early 20th-century U.S., with endorsement coming from such authorities as John Henry Wigmore. In his 1908 work, *A Supplement to a Treatise on the System of Evidence in Trials at Common Law Containing the Statutes and Judicial Decision 1904-1907*,³⁰ Wigmore made an “additional note to a paragraph” that provided that “an interpreted statement may be used against a witness (not a party-opponent) as a self-contradiction, without calling the interpreter, where the witness, by selecting his interpreter, virtually made him his agent to speak, or otherwise adopted the interpreter’s statement.”³¹

Also, in his 1920 work, *A Pocket Guide of the Rules of Evidence in Trials at Law*,³² Wigmore made a more complete additional note to a provision that prescribed as follows: “1282 Par. (b) When a statement made by a person out of court, speaking through an interpreter, is to be introduced, the interpreter must be called as the witness to

³⁰ John Henry Wigmore, *A Supplement to a Treatise on the System of Evidence in Trials at Common Law Containing the Statutes and Judicial Decision 1904-1907* (Boston: Little, Brown, 1908).

³¹ Wigmore, *A Supplement*, 174.

³² John Henry Wigmore, *A Pocket Guide of the Rules of Evidence in Trials at Law* (Boston: Little, Brown, 1920).

the statement; (1) except where under the circumstances the person speaking was a party who made the interpreter his agent to speak for him.—(W. § 1810).”³³

With the support of such powerful authority, *Vose* kept growing into a dominant case law in U.S. Courts. In a sense, this is understandable because the “agency theory” probably worked as a strong, expedient, preemptive legal tool when accuracy verification of interpreter-assisted out-of-court testimonial statements was close to impossible without necessary resources, such as recording technology, trained language experts, etc., and was also extremely troublesome and time-consuming even with resources. In addition, the theory’s “presumptive accuracy guarantee” may have seemed of critical importance to prevent a potentially unfair administration of criminal justice, as the theory successfully eliminated an impossibly high common-law hearsay bar involving nasty out-of-court interpreter-related issues.

Still, the U. S. is the only common-law jurisdiction that has adhered to the “agency theory” in handling interpreter-assisted extrajudicial testimonies. The “agency theory” in *Vose* was actually criticized by a high court in Australia back in 1960, in *Gaio v. R*,³⁴ and the U.K., a nation of the longest common-law history, officially rejected admission of interpreter-assisted hearsay testimonies in as early as 1958 in *R v. Attard*,³⁵ which thereafter required prosecutors to ensure that their interpreters could and would testify in court whenever necessary.

³³ John Henry Wigmore, *A Pocket Guide*, *id.*, 290.

³⁴ *Gaio v. R* HCA 70; 104 CLR 419 (10 October 1960). “I think, with respect, that this involves yet another misuse of that much misused word [‘]agent[’].” *Gaio*, *id.*, 428.

³⁵ *R v. Attard*, Central Criminal Court (1958) 43 Cr. App. R. 90.

C. “Agency Theory” Grew into “Agent-and-Conduit Theory”

Creating Further Confusion

The term “language conduit” most probably appeared for the first time among all the U.S. courts in the 1952 ruling of the U.S. Court of Military Appeals, *United States v. Plummer*.³⁶

1. Emergence of “Conduit Theory” in the 1950s and 1960s

Plummer, however, contained only a passing reference in the dissent opinion that “[c]ounsel for accused knew he was going to develop the theory of no fresh complaint and that *the interpreter was the conduit through which any conversations must travel*” (emphasis added).³⁷

The concept of “conduit interpreter” is not unique to the U.S. Around the same time, a high court in Australia in its 1960 ruling of *Gaio v. The Queen*,³⁸ while criticizing Vose’s “agency theory,”³⁹ ruled instead that the interpreter was “*merely a mouthpiece*” (emphasis added),⁴⁰ describing that “the role played by Arthur [interpreter] ... was not different ... from that which ... *an electrical instrument might fulfill in overcoming the barrier of distance*” (emphasis added).⁴¹

³⁶ *United States v. Plummer*, 3 CMA 107 (U.S.C. of Military Appeals 1952).

³⁷ *United States v. Plummer*, *id.*, 112.

³⁸ *Gaio v. R* HCA 70; 104 CLR 419 (10 October 1960).

³⁹ *Gaio v. R* HCA 70; 104 CLR 419, 428.

⁴⁰ *Gaio v. R* HCA 70; 104 CLR 419, 430.

⁴¹ *Gaio v. R* HCA 70; 104 CLR 419, 430.

2. Unfortunate Mixture of “Agency Theory” and “Conduit Theory”

The first U.S. case that specifically used the “conduit theory” was a 1973 ruling by the Ninth Circuit, *United States v. Ushakow*.⁴² Unfortunately, however, *Ushakow* was an extremely terse ruling with no legal analysis.⁴³

Ten years later, the Second Circuit made a landmark ruling, *United States v. Da Silva*,⁴⁴ which combined *Vose*’s “agency theory” and *Ushakow*’s “conduit theory,” a hybrid that was invented in order to apply FRE 801(d)(2)(C) or (D) to overcome the out-of-court interpreter hearsay issue with an additional theoretical reinforcement for “*prima facie* accuracy and reliability.” *Da Silva* adjudicated that: 1) an interpreter is just a “language conduit,” adding no extra layer of hearsay; and that 2) unless otherwise shown, the interpreter’s translation is *prima facie* accurate (reliable). With the dawn of the *Roberts*’⁴⁵ “indicia of reliability” era, this new “agent-and-conduit theory” which provided additional reliability reinforcement to the “agency theory” kept gaining authority all the way into the 21st century.

3. “Agency” Determination Criteria for FRE 801(d)(2)(C) or (D) Further Obscured

The “agency” determination process in *Da Silva* for applying FRE 801(d)(2)(C) or (D) stipulated as follows: 1) if the interpreter has no motive to mislead, and if there is

⁴² *United States v. Ushakow*, 474 F2d 1244 (9th Cir. 1973)

⁴³ “Ushakow challenges the admissibility of certain testimony... Chicas spoke in Spanish and there was no proof that Ushakow understood Spanish. However, the record reflects that Carlon was translating and was *merely a language conduit* between Ushakow and Chicas. Therefore, his testimony is within the same *exception to the hearsay rule as when a defendant and another are speaking the same language*” (emphasis added), *Ushakow*, *id.*, 1245.

⁴⁴ *United States v. Da Silva*, 725 F2d 828 (2d Cir. 1983)

⁴⁵ *Ohio v. Roberts*, 448 U.S. 56 (1980).

no reason to believe the translation is inaccurate, then the interpreter becomes a “dual agent” for the police and the suspect; and 2) additionally, the interpreter also becomes a language “conduit,” and this “conduit” status creates “testimonial identity” between the suspect and the interpreter for the application of FRE 801(d)(2)(C) or (D).⁴⁶ This way, by trying to reinforce “interpreter accuracy and reliability,” *Da Silva* succeeded in further obscuring the “agency” determination criteria for the application of FRE 801(d)(2)(C) or (D) “vicarious admission.”

Ten years later, the Ninth Circuit took up in *U.S. v Nazemian*⁴⁷ where the Second Circuit left off in *Da Silva*, further compounding the whole unfortunate issue. *Nazemian* rephrased *Da Silva* into a 4-Tier Test for the application of FRE 801(d)(2)(C) or (D), which has become the current dominant U.S. case law. The *Nazemian*’s four factors to determine “whether the interpreter’s statements should be attributed to the defendant under either the agency or conduit theory” are: 1) which party supplied the interpreter; 2) whether the interpreter had any motive to mislead or distort; 3) the interpreter’s qualifications and language skill; and 4) whether subsequent actions were consistent with the translated statements. *Nazemian*, considering these 4 factors, determined that the government-provided interpreter was a “mere language conduit” or “Nazemian's agent.”⁴⁸

In addition to further obscuring the “agency” determination criteria for the application of FRE 801(d)(2)(C) or (D) “vicarious admission,” *Nazemian*’s 4-Tier Test began to present new problems and questions. Test 1 is about which party supplied the

⁴⁶ *Da Silva, id.*, 831.

⁴⁷ *United States v. Nazemian*, 948 F2d 522 (9th Cir. 1991).

⁴⁸ *United States v. Nazemian, id.*, 948 F2d 522 (9th Cir. 1991), 527-528.

interpreter. However, the current law almost always approves interpreters supplied by the police, so it seems that the only viable purpose of this test is to screen those supplied by the suspect or the victim. Test 2 is as to whether the interpreter had any motive to mislead. Here again, however, no clear criteria for finding such motive are shown while the case law has usually found “police-supplied” interpreters free of any motive to mislead. In addition, finding of ill-motive or bias in an interpreter is fundamentally a *Crawford* Confrontation Clause issue, not to be determined *in limine*.

Test 3 is about qualifications and language skill of an interpreter, which concerns “translation accuracy” and thus “reliability” of the evidence. “Accuracy” actually is the single most important issue in all interpreter-involved cases, and verification of “translation accuracy” practically can subsume all the other criteria tests. However, verification of “accuracy” is also the most difficult as well as the most troublesome issue since “what” should be verified “how” is not easy to stipulate or practice. Looking into the interpreter’s “qualifications and experience” may be of some help, but they only serve as an indirect guarantee for the “accuracy” of any particular translation in question.

Finally, Test 4, “consistency of the subsequent action with the preceding translation,” may become of some help in an undercover investigation but has no real application value in a custodial police interview, so this is but another indirect assessment that gets subsumed by “accuracy” assessment.

4. Logic Dilemma of “Agent-and-Conduit Theory”

The most serious problem created by the “agent-and-conduit theory” proclaimed by *Da Silva* and *Nazemian* is its inherent logic dilemma, resulting from the

fact that the “cause-and-effect” relation between “agency” and “conduit” has never been made clear. The dilemma presents the following four questions. 1) Does an interpreter become an “agent” because the interpreter is a “conduit”? 2) Does an interpreter become a “conduit” because the interpreter is an “agent”? 3) Does an interpreter become an “agent” and a “conduit” at the same time? 4) Does an interpreter become either an “agent” or a “conduit”? Each line of these four logic patterns presents problems as follows.

Frist, does an interpreter become an “agent” because the interpreter is a “conduit”? Starting from *Vose*, this theory’s only condition for the establishment of “agency relationship” is that the “two parties commence communication through an interpreter,” which is deemed as an act that “presumes” that the interpreter’s translation is “*prima facie* accurate (a conduit),” which makes it an “answer-begging” logic for proving the “unproven accuracy (a conduit).” In addition, , if an interpreter is already a conduit (accurate), an “agency” status is unnecessary or superfluous, because the “identicalness” of the “conduit” interpreter’s translation to the suspect’s original statement should pass any hearsay bar or even enable the application of FRE 801(d)(2)(A).

Second, does an interpreter become a “conduit” because the interpreter is an “agent”? If this is the claimed logic, then it makes an interpreter only “presumptively” accurate (a conduit) by making the interpreter a “co-agent.” As to whether the interpreter is truly a “conduit” (accurate) or not is a question that requires a separate, independent, objective proof.

Third, does an interpreter become an “agent” and a “conduit” at the same time? As already stated with the first line of logic, finding of both an “agent” status and a

“conduit” status is superfluous and unnecessary. If an interpreter is found to be an “agent,” that would already suffice the condition for FRE 801(d)(2)(C) or (D) “vicarious admission.” On the other hand, if the ultimate purpose of this theory is to prove that the interpreted statement is “identical” to the suspect’s original foreign-language statement in order to pass the hearsay bar, an interpreter only needs to become a “conduit” (accurate). The “agency” determination is superfluous.

Fourth and last, does an interpreter become either an “agent” or a “conduit”? This would make the law simply opportunistic and arbitrary, using the “agency” theory if FRE 801(d)(2)(C) or (D) fits in, but switches to the “conduit” theory for the admission of a non-party’s interpreter-assisted statement for which FRE 801(d)(2)(C) or (D)’s vicarious admission does not apply.

The fundamental cause of the above logic dilemma comes from the fact that *Vose, Ushakow, Da Silva, and Nazemian* have replaced the common-law “agency” determination for FRE 801(d)(2)(C) or (D) with a new set of “conduit” determination for out-of-court interpreters. This is evident from the fact that the *Nazemian* ruling itself is extremely vague on the distinction between “agent” and “conduit.” For instance, the ruling says that “[t]he circuits which have considered the question have recognized a number of factors which may be relevant in determining whether the interpreter’s statements should be attributed to the defendant under *either the agency or conduit theory*” (emphasis added),⁴⁹ or that “[u]nder the circumstances of this case, it was not plainly erroneous for the district court to treat the interpreter *as a mere language conduit*

⁴⁹ *United States v. Nazemian, id.*, 527.

or as Nazemian's agent" (emphasis added).⁵⁰

D. Fallacy of "Agent-and-Conduit Theory": Ultimate Logic Dilemma

The ultimate dilemma of the "agent-and-conduit theory" can be summarized into the following two mutually exclusive contentions.

1. Inherent and Ultimate Logic Dilemma of "Agent-and-Conduit Theory."

Contention I: FRE 801(d)(2)(C) or (D) vicarious admission is based on *respondeat superior*; therefore, if an interpreter indeed can become an agent for the suspect during a police interview, this alone becomes sufficient to fulfill the FRE 801(d)(2)(C) or (D) requirement without an additional and superfluous finding of the interpreter being a "conduit."

Contention II: if FRE 801(d)(2)(C) or (D) applies because an interpreter indeed is a "conduit," then a "conduit" interpreter's oral translation should be able to overcome any types of hearsay bar, not just for the application of FRE 801(d)(2)(C) or (D), regardless of "for or against" any party, and it can also be used even with "a non-party," making a finding of "agency" unnecessary and superfluous.

This dilemma has actually caused real confusion and inconsistency in "party or non-party" rulings. One example is *Correa v. Supreme Court of Orange County*⁵¹ (Cal. App. 2000) and *Correa v. Superior Court of Orange County*⁵² (Cal. 2002). The issue

⁵⁰ *United States v. Nazemian*, *id.*, 528.

⁵¹ *Correa v. Superior Court of Orange County* 84 4th 631 (Cal. App. 2000).

⁵² *Correa v. Superior Court*, 27 4th 444 (Cal. 2002).

in *Correa v. Supreme Court of Orange County* (Cal. App. 2000) was whether and how to admit an interpreter-assisted extrajudicial statement by a “victim,” who was a “non-party.”

The People contended that “interpreters translating statements of *nonparties* (witnesses and victims) should be viewed as [‘]language conduits[’] who do not create an additional layer of hearsay,”⁵³ but the ruling excluded the victim’s statement as hearsay because the vicarious admission by the “agency” theory only applies to a “party” opponent, adjudicating that “[t]he People fail to offer any logical or legal explanation as to why different standards should be applied for translated statements of parties and nonparties.”⁵⁴ Two years later, however, *Correa v. Superior Court of Orange County* (Cal. 2002) reversed *Correa* (Cal. App. 2000), ruling that the “language conduit” concept was not limited to parties, if “the translated statement fairly may be considered to be that of the original speaker” based on the *Nazemian*’s Four-Tier Test.⁵⁵

Another example is *Oregon v Rodriguez-Castillo*.⁵⁶ Oregon’s OEC 801(4)(b)(D)⁵⁷ stipulates that: 1) an interpreter’s translated statement as an “agent” of the suspect can be admitted; but that 2) an interpreter’s translated statement as an “agent” of the victim cannot be admitted, because a “victim” is “not a party.”⁵⁸ Therefore, in

⁵³ *Correa v. Superior Court of Orange County*, 84 4th 631 (Cal. App. 2000), 638.

⁵⁴ *Correa v. Superior Court of Orange County*, *id.*, 638.

⁵⁵ *Correa v. Superior Court*, 27 4th 444 (Cal. 2002), 457. For *Nazemian* 4-Tier Test, see Chapter I, C-3, *supra*.

⁵⁶ *State v. Rodriguez-Castillo*, SC S054607, Supreme Court of Oregon, 345 Ore. 39; 188 P.3d 268; 2008 Ore.

⁵⁷ Oregon State’s equivalent of FRE 801(d)(2)(C) or (D)

⁵⁸ *State v. Rodriguez-Castillo*, *id.*, 48.

order to get an interpreter-assisted victim's extrajudicial statement admitted into evidence, the prosecutor tried to apply OEC 803(18a)(b), which permits admission of a sexually abused victim's hearsay statement. However, OEC 803(18a)(b) applied only if the detective had been able to hear the testimony directly from the victim. It did not apply in this case because the detective had heard the victim's statement indirectly through an interpreter, which added another layer of hearsay.⁵⁹ The translation was made by an interpreter who would have become an "agent-and-conduit" for the victim by OEC 801(4)(b)(D), if the victim had been a "party opponent," adding no extra layer of hearsay. Therefore, the big question is: how and why does the same interpreter suddenly add an extra layer of hearsay if the application was for OEC 803(18a)(b), and not for OEC 801(4)(b)(D)?

2. Re-Separate "Agency" and "Conduit" and Re-Examine "Agency" Validity

We must once again remember that the "agency theory" and the "conduit theory" were originally two different, separate theories. The "agency theory" was invented all the way back in 1865 by *Camerlin v. Palmer Co.* in order to use "vicarious admission" to make an interpreter-assisted extrajudicial statement "non-hearsay." The "conduit theory," on the other hand, was introduced more than a century later in 1973⁶⁰ in order to preempt "accuracy and impartiality (reliability)" verification and was combined with

⁵⁹ "The victim's statements that defendant had abused her would have been admissible under OEC 803(18a)(b) if she had made them to the detective and he had been able to testify to them without Perez's intervention. That did not happen, however. Instead, the victim told Perez what happened, and Perez told the detective. Perez's statements to the detective added another layer of hearsay but not the kind of hearsay that is admissible under OEC 803(18a)(b). Accordingly, the detective's testimony was admissible only if Perez's out-of-court statements came within some other exception to the rule against hearsay." *State v. Rodriguez-Castillo, id.*, 48-49.

⁶⁰ *United States v. Ushakow*, 474 F2d 1244 (9th Cir. 1973).

the “agency theory” in 1983,⁶¹ at the dawn of the *Roberts*’ “indicia of reliability” era, possibly as a reinforcement to “pre-empt” the need to “prove or verify accuracy and impartiality (reliability)” required by the pre-*Crawford* Confrontation Clause.

In order to resolve this inherent logic dilemma of the “agent-and-conduit theory,” therefore, the “agency theory” and the “conduit theory” must first be re-separated and re-examined independently of each other for each theory’s true validity, applicability, and realistic workability.

⁶¹ *United States v. Da Silva*, 725 F2d 828 (2d Cir. 1983).

Chapter II

FRE 801(d)(2)(C) or (D) “Agency Theory” for Interpreters: Not Workable

This chapter will present one of the key arguments of this thesis, which is that FRE 801(d)(2)(C) or (D) “agency theory” for police interpreters is fundamentally unworkable.

A. Use “Agency Law” for FRE 801(d)(2)(C) or (D) Determination

This section will begin with one of this thesis’ main contentions that the “agency” determination for the application of FRE 801(d)(2)(C) or (D) in interpreter-assisted extra-judicial statements must be made strictly by the “agency law” *only*, and *never* by combining it with the “conduit” theory, for the following three reasons.

1. Three Reasons Why Agency Determination Must Be Made by “Agency Law” Only

First, FRE 801(d)(2)(C) or (D) requires independent proof by substantive “agency law.” Second, evidence law drafters also intended that the determination for FRE 801(d)(2)(C) or (D) to be based on the “agency law.” Third, using the “conduit theory” will push the “agency” determination out of the FRE 801(d)(2) “non-hearsay” framework, since “conduit” fundamentally concerns “accuracy and reliability,” the determination of which inevitably invokes *Crawford’s* Confrontation Clause. The following section will discuss these three reasons in detail.

First, FRE 801(d)(2)(C) or (D) requires independent proof by substantive

“agency law,” which is specifically stipulated by FRE 801(d)(2). The law requires an independent proof, in addition to the hearsay statement itself for “bootstrapping,” that establishes “the declarant’s authority under (C)” or “the existence or scope of the relationship under (D).”⁶² Here, “the most common approach to answering this question” as to whether there really is an “agency relationship” is to “look to the substantive law of agency.”⁶³

The second reason is that the evidence law drafters’ intention was also most probably for FRE 801(d)(2)(C) or (D) to be based on the “agency law.” FRE 801(d)(2), or “non-hearsay as admissions by a party-opponent,” never had a separate, independent category labeled an “interpreter,” though it does for a “crime co-conspirator,” which is FRE 801(d)(2)(E), and thus the determination for which must be based specifically on a finding of co-conspiratorship between the suspect and the declarant,⁶⁴ not an “agency” relationship. There is no such independent category for an “interpreter.” Therefore, to determine the “agency relationship” between the interpreter and the suspect, the substantive “agency law” must be applied.

Even Wigmore, an advocate of a separate “non-hearsay” category consisting of “admissions by a party-opponent, including vicarious admissions,” which he tried to clearly differentiate from other “hearsay exceptions,”⁶⁵ never created a separate,

⁶² FRE 801(d)(2).

⁶³ Aviva Orenstein, *Acing Evidence: a Checklist Approach to Solving Evidence Problems* (St. Paul, MN: West Academic, 2014), 83.

⁶⁴ G. Michael Fenner, *The Hearsay Rule*, 3rd ed. (Durham, NC: Carolina Academic Press, 2013), 80.

⁶⁵ Wigmore first called this category “hearsay rule satisfied” category, which was the “forerunner of Rule 801(d)’s [‘]not hearsay[’] category.” Sam Stonefiled, “Rule 801 (d)’s Oxymoronic ‘Not Hearsay’ Classification: the Untold Backstory and a Suggested Amendment,”

independent category for an “interpreter” within the “non-hearsay, vicarious admissions.” Wigmore listed the following eight separate categories as “[p]rivies in [o]bligation...[t]he statement of the other person...receivable whenever he is by the substantive law one who could at the time make the party liable”: a) co-promisor; b) a principal debtor; c) an agent, d) an attorney-at-law; e) a partner; f) a wife or husband; g) a co-conspirator; and h) a joint tortfeasor.”⁶⁶ However, Wigmore never listed an “interpreter” as a separate, independent category. He only mentioned an “interpreter” in a form of an additional note using the term “agency,” as follows: a) “[w]hen a statement made by a person out of court, speaking through an interpreter, is to be introduced, the interpreter must be called as the witness to the statement”;⁶⁷ and b) “except where under the circumstances the person speaking was a party who made the interpreter his *agent* to speak for him” (emphasis added).⁶⁸

Furthermore, the Manual for Courts Martial, both “MCM 1951” and “MCM 2012,” uses the term “agent” based on the “agency law” doctrine. The MCM is the only U.S. statute that has a clear provision for an “interpreter” acting as an “agent” under “agency theory” for “vicarious, ‘non-hearsay’ admission.” Both MCM 1951 and MCM 2012 provisions clearly use the term “agent” from the “agency law.” MCM 1951 stipulates “a statement made through an interpreter may be proved only by the testimony of the interpreter...and may not be proved by...the interpreter’s translation.

Federal Courts Law Review 5 (2011), 14.

⁶⁶ Wigmore, *A Pocket Guide*, p173, p 290. Also see fn. 32, *supra*.

⁶⁷ Wigmore, *A Pocket Guide*, p 290. Also see fn. 32, *supra*.

⁶⁸ Wigmore, *A Pocket Guide*, p 290. Also see fn. 32, *supra*.

However,...such a statement may be proved by...the interpreter's translation if the interpreter was acting as the *agent* of the person who made the statement" (emphasis added).⁶⁹ Similarly, MCM 2012 also stipulates "Rule 801(d)(2)(C) makes admissible [']a statement by a person authorized by the party to make a statement concerning the subject.[']...utilizing *agency* theory. Rule 801(d)(2)(D) makes admissible [']a statement by the party's *agent* or servant concerning a matter within the scope of the *agency or employment of the agent or servant*, made during the existence of the relationship.[']...Statements made by interpreters...serving as a translator for a service member in a foreign nation...should be admissible under Rule 801(d)(2)(D) or Rule 801(d)(2)(C)" (emphasis added).⁷⁰

The third reason is that the use of the "conduit theory" will push the "agency" determination out of the FRE 801(d)(2) "non-hearsay" framework since "conduit" is basically about "accuracy and reliability," and thus its determination will inevitably invoke *Crawford's* Confrontation Clause. While "conduit" is a "disguise" term for "translation accuracy" and "interpreter reliability," the case law's⁷¹ conditions for "conduit" *only asserts* "unproven accuracy and reliability."

As has already been shown in Chapter I, C-3, *supra*, the first three conditions in *Nazemian* 4-Tier Test are: a) the interpreter has been supplied by a reliable party (usually the police); b) the interpreter has no motive to mislead or distort; and c) the interpreter

⁶⁹ Manual for Courts Martial (MCM), United States (1951 Edition), §141. Statements Made Through Interpreters, p. 253.

⁷⁰ Manual for Courts-Martial (MCM), United States (2012 Edition), "Appendix 22 Analysis Of The Military Rules of Evidence 801(d)(2)," A22-54.

⁷¹ *Da Silva, id.*, 831, and *Nazemian, id.*, 527.

has sufficient qualifications and language skill. If these three conditions are met, then the interpreter is deemed a “conduit.” However, while pre-*Crawford* (*Roberts*) courts could have very easily made this determination *in limine* by FRE104(a), in post-*Crawford* courts, “reliability” must be found only through in-court confrontation, which is precisely what Justice Barkett in *Charles*⁷² objected to and warned against. Therefore, to test the real validity and applicability of the “agency theory,” it must be separated from the “conduit theory” and re-examined independently.

2. “Agency Determination” in Common Law is by “Consent” and “Control”

In common law of agency (2nd and 3rd Restatement), the “agency relationship” is determined by two key factors: “consent” and “control,” which has long been established by the abundant case law. Just to mention a couple of example rulings from a multitude of case law, in *Industrial Indem. Co. v. Harms*, 28 F3d 761 (8th Cir. 1994),⁷³ it was ruled that “[t]o establish an agency relationship, one must prove ‘the manifestation of *consent* by one person to another that the other shall act on his behalf and subject to his *control*, and *consent* by the other so to act’ ” (emphasis added).

Also, *Chemtool, Inc. v. Lubrication Techs.*, 148 F.3d 742 (7th Cir. 1998)⁷⁴ ruled that “agency is a *consensual*, fiduciary relationship,” and that “parties must *consent* to a principal-agent relationship,” the test of which is “whether the alleged principal has the right to *control* the manner and method in which work is carried out by the alleged agent

⁷² *United States v. Charles, id.*, (11th Cir. 2013), which ruled that not being able to cross-examine the interpreter violated the defendant’s Confrontation right.

⁷³ *Industrial Indem. Co. v. Harms*, 28 F3d 761 (8th Cir. 1994), 762.

⁷⁴ *Chemtool, Inc. v. Lubrication Techs.*, 148 F.3d 742 (7th Cir. 1998), 745.

and whether the alleged agent can affect the legal relationships of the principal” (emphasis added).

3. Double Criteria for Civil Litigations and FRE 801(d)(2)(C) or (D)

“Agency *vel non*”⁷⁵ is often the most critical issue in many civil litigations as “[a]gency label carries significant legal consequences”⁷⁶ to the principal in the form of liability for the damage caused by his or her agent, the rationale for which stems from the common-law doctrine of *respondeat superior* to protect an innocent third party.

In contrast, “agency determination” for FRE 801(d)(2)(C) or (D) is not a very high bar. Although FRE does not define “agent” or “servant,” the case law shows these words refer to the “traditional agency relationship” based on common-law doctrine.⁷⁷ However, there is a seeming “double criteria” between the agency determination for civil litigations and that for FRE 801(d)(2)(C) or (D), though both are supposed to be based on “preponderance of evidence.” As has already been mentioned, potential “legal consequences” of an “agency relationship” in ordinary civil litigations are enormous,⁷⁸ and thus agency determination very often becomes one of the most crucial litigation issues. In contrast, the “agency determination” for FRE 801(d)(2)(C) or (D) is a preliminary issue that can be decided single-handedly by a trial judge by FRE 104(a),

⁷⁵ Daniel S. Kleinberger, *Agency, Partnership, and LLCs*, 4th ed. (New York: Wolters Kluwer Law & Business, 2012), 210.

⁷⁶ Kleinberger, *Agency*, 210.

⁷⁷ David F. Binder, *Hearsay Handbook*, 4th ed. (Danvers, MA: Thomson Reuters, 2013), 848.

⁷⁸ Kleinberger, *Agency*, 210.

though both determinations are based on the same “preponderance of evidence.” Even “bootstrapping” is permitted as long as there is an additional, separate proof.⁷⁹

Moreover, while challenging evidential admissibility for FRE 801(d)(2)(C) or (D) is possible, in most cases such challenges usually turn out unsuccessful. It is certainly true that the “statement...does not by itself establish the declarant”⁸⁰ for (C), (D) and (E) in FRE 801(d)(2), and that the opposing party can still object to its conditional admission and challenge again later by FRE 104(b). Also, it is certainly true that in some very rare cases, such admissibility challenges have succeeded, as was in *United States v. Bonds*,⁸¹ a case on an alleged steroid use by a big-name Major League Baseball player.⁸² By and large, however, FRE 801(d)(2) “calls for generous treatment for this avenue to admissibility,”⁸³ which brings about dire legal consequences for LEP (limited English proficiency) suspects who must respond to questions through a foreign-language interpreter in a custodial police interview.

B. Interpreter Cannot Become a Dual-Agent for the Police and the Suspect

This section and the following section (Section C) will present the next major

⁷⁹ *Bourjaily v. United States*, 483 U.S. 171 (1987). Also, the Congress’s Advisory Committee notes quoted in *Bourjaily* further stated that “[a]n item, offered and objected to, *may itself be considered in ruling on admissibility*, though not yet admitted in evidence.” *Ibid.* (emphasis added). *Bourjaily v. United States*, *id.*, 179.

⁸⁰ FRE 801(d)(2)

⁸¹ *United States v. Bonds*, 608 F3d 495 (9th Cir. 2010).

⁸² With one of the three panel judges dissenting, the appellate court found that Barry Bonds’ long-time personal trainer was not his agent but only an independent contractor, for the reason that Bonds exercised no control over the way the trainer did his work. *Bonds*, *id.*, 504-505.

⁸³ FRE 801(d)(2) Advisory Committee’s note quoted in G. Michael Fenner, *The Hearsay Rule*, 3rd ed. (Durham, NC: Carolina Academic Press, 2013), 62.

contention of this thesis, which is that if we conduct a traditional common-law “agency determination” for the FRE 801(d)(2)(C) or (D) admission of an interpreter’s translated statement of the LEP suspect’s original foreign-language statement in a custodial police interview, we will find “no agency relationship” between the interpreter and the suspect, thus invalidating the application of FRE 801(d)(2)(C) or (D). This will be shown in two steps. First, Section B will demonstrate that an interpreter in a police interview cannot become a “dual agent” for the police and the suspect. Then, Section C will establish that an interpreter in a police interview does not become the suspect’s agent.

1. An Interpreter in a Police Interview Becomes an Agent for the Police First

Interpreters for police interviews are usually divided into two types: 1) a “bilingual” police officer serving as an interpreter, and 2) an outside interpreter, usually employed by an independent interpreting service company (but could also be a complete free-lancer), who has been given an assignment by the employer (if employed) or has received a direct request from the police (if a free-lancer) to do the interpreting work, paid either through his or her employer who has a business contract with the police or paid directly by the police. Whichever category an interpreter belongs to, an interpreter for a police interview becomes an “agent” for the police first upon assignment.

In the case of a “bilingual” police officer serving as an interpreter, since the interpreter is already an employee of the police, he or she is an “agent” for the police, “authorized to do the interpreting work between the interrogating police officer and the suspect” working “within the scope of this interpreting work.”

In the case of an outside interpreter, if the interpreter is an employee of an interpreting service company, the interpreter is an agent for this company, which has a

business contract with the police. As to whether the interpreter (either dispatched by a private company or working as a complete free-lancer) is working as a “non-employee agent”⁸⁴ for the police or “non-agent service provider” for the police will depend on several key factors,⁸⁵ which will be discussed in detail below.

The first key factor is if there was a mutual “consent” to an agency relationship. For each assignment, the police formally and specifically make a request for the service to which the interpreter consciously and knowingly consents. However, we must examine further to see whether the consent was made as a “non-employee agent” for the police or simply as a “non-agent service provider.” In the case of an outside interpreter, the interpreter most probably signs a job assignment or agreement document, which usually states under what terms the police or the employer is assigning this particular interpreting job, which may say “non-agent service provider,” not “non-employee agent.” However, if a discrepancy appears between the terms of the agreement and the real content and the nature of the assigned task, the case law has usually supported the latter, not the agreement’s mere terminology.⁸⁶ Therefore, the determination requires examination of other relevant factors as follows.

⁸⁴ A “non-employee agent” is the Third Restatement term for the old Second Restatement term “independent contractor agent,” both referring to a person who is *not* an “employee” of the “principal” but is still working as his “agent.” A “non-agent service provider” is the Third Restatement term for an “independent contractor” in the Second Restatement, referring to a person who is “neither an employee of nor an agent for” the principal. Second Restatement of Agency, §2; Third Restatement of Agency §1.01 Comment c.

⁸⁵ Kleinberger, *Agency*, 103-105.

⁸⁶ For example, in the aforementioned *Chemtool, Inc. v. Lubrication Techs.*, the plaintiff (Chemtool) sued the defendant for a breach of the fiduciary duty despite the fact that there was a verbal agreement on their continued agency relationship. After examining the way the business was conducted between the two parties thereafter, however, the Seventh Circuit Appellate Court determined, in a non-uncertain tone, that no agency relationship existed between them. *Chemtool, Inc. v. Lubrication Techs.*, 148 F.3d 742 (7th Cir. 1998), 744, 746-747.

The second key factor is how much “control (instructions, supervision, etc.)” the police or the interrogating police officer has over the interpreter’s work. The police usually have a detailed manual and instructions on “how to use an interpreter,” and officers are usually thoroughly briefed on “how to keep the interview in control.”⁸⁷ Also, if they see any problems with the interpreter’s performance, they can stop the interview and arrange for a replacement, since the police are the ones that have “hired” the interpreter for the remuneration paid. To describe this “remuneration” as one key factor giving the payer the power to influence the interpreter, one court ruling used an old proverb, “He who pays the piper calls the tune.”⁸⁸ All in all, therefore, the interpreter will more likely be found serving as an “agent” for the police.

The third factor is the extent of required “special skill.” If a very “special skill” is required to perform the task, then the interpreter will more likely be found a “non-agent.” However, while “genuine” interpreting work is a “highly technical skill” that requires many years of professional training,⁸⁹ a skill that requires far more than

⁸⁷ Such manuals are widely available in print or on the Internet, one example of which is PoliceLink, “The Use of Interpreter During an Interview” (May 31, 2007) (<http://policelink.monster.com/training/articles/1963-the-use-of-an-interpreter-during-an-interview>), Retrieved on November 25, 2015. Also see “The Interpreter” in Eric Shepherd and Andy Griffiths, *Investigative Interviewing: The Conversation Management Approach*, 2nd ed. (Oxford: Oxford University Press, 2013), 181-185.

⁸⁸ *Ko v. United States*, 694 A.2d 73 (D.C. App.1997), 83.

⁸⁹ In the United States, interpreting training and interpreting studies are usually undertaken by universities that offer certificate programs or degree programs often at the graduate level. Examples of schools well-known for such training include Monterey Institute of International Studies, Master of Arts Program in Conference Interpretation, or the University of Maryland, Master of Professional Studies in Interpreting. Also, Harry Obst, who served seven U.S. Presidents, from Lyndon Johnson to Bill Clinton, as a German interpreter, writes that professional interpreting is a skill that requires “university training” because “complete and accurate interpretation” calls for the “same careful methodology as is used by physicians, lawyers, engineers, and other highly skilled professionals.” Harry Obst, *White House Interpreter: the Art of Interpretation* (Bloomington, Indiana: AuthorHouse, 2010), 36. In addition, the author of this thesis herself can testify to this, too, based on her twenty-five years’ experience as a Japanese-English conference interpreting instructor,

just being “bilingual,” the status quo of “police interpreters in the U.S.” shows a widespread and increasing practice of using putatively “bilingual” police staff as ad hoc interpreters.⁹⁰ If this is the case, no particularly special skill can be assumed, even though these police employees are agents of the police.

The fourth factor is the extent of necessary tools, equipment provided by the police. Though the need for “equipment” is limited (unless the interview is recorded), the interview room or facility is of course all prepared by the police. Therefore, this factor examination will more likely find the interpreter an “agent” for the police.

The fifth factor is the length of time served. If the service time is long, the interpreter will more likely be found an “agent.” Usually, each interpreting session lasts for only a few hours (sometimes longer), and each assignment is independently requested, though it is a little difficult to determine the criteria for the “length of time.” At the same time, however, it is also very common for the police to request the same interpreter repeatedly if he or she is found to be “reliable.”

The sixth factor is whether the interpreter is paid “by the job” or “by the time worked.”⁹¹ If the interpreter is paid “by the time worked,” then he or she will more likely become an “agent” for the police. Interpreters are almost always paid by the “hours (time) served,” which means that this factor examination will more likely find the interpreter working as an “agent.”

both at graduate and undergraduate levels as well as at specialized conference interpreter training institutes, all in Tokyo, Japan.

⁹⁰ Kaytie at Legal Language, “Problems with Police Officers as Legal Interpreters,” *Legal Language Services*, March 13, 2014. <https://www.legallanguage.com/legal-articles/police-legal-interpreters/> (Retrieved on September 10, 2014).

⁹¹ Kleinberger, *Agency*, 113-114.

To summarize, not to speak of the current vast majority of police interpreters who are already “employees” of the police, it seems quite reasonable to say that “outside” interpreters in almost all cases also become an “agent” for the police upon assignment.

2. Conflict of Interest: “Dual Agency” for the Police and the Suspect Is Not Possible

The next question is whether an interpreter who is already an “agent” for the police can also become an “agent” for the suspect. This thesis contends that dual agency for the police and the suspect is as impossible as dual agency for the prosecutor and the defendant.

It is certainly true that the agency law (2nd and 3rd Restatement) does not prohibit “dual agency” itself,⁹² as long as: a) the agent has fully notified the principals of the existence of this dual agency; and b) the agent fulfills his or her “fiduciary duties” to all the principals. However, it is also true that “unless otherwise agreed, an agent may not act for anyone whose interests might conflict with the interests of the principal.”⁹³ Also, “the mere existence of a dual agency violates the duty of undivided loyalty,” and “the dual agent risks specific conflicts of duty.”⁹⁴

The most typical example prohibiting such dual agency with clear conflict of interest would be that an attorney cannot simultaneously represent both the plaintiff (or

⁹² “[O]ne may act as agent for both parties to a transaction if it be with their full knowledge and consent,” citing *Warner v. Young*, 308 Ill. 239, 241, 139 N.E. 393; *Adams v. Larson*, 279 Ill. 268, 116 N.E. 658. *Manda v. Branham*, 50 Ill. App. 3d 91; 365 N.E.2d 216 (Ill. App. 1977), 219.

⁹³ Kleinberger, *Agency*, 154.

⁹⁴ Kleinberger, *Agency*, 154.

even the prosecutor) and the defendant in the same trial. “Dual agency for the police and the suspect” sounds similarly oxymoronic, even if an interpreter is acting only within the scope of being a mere language translator between the two parties. If such “impartiality” as a “mere language translator” is to be claimed, it would have to be accompanied by an institutional guarantee, such as a court appointing its interpreter as an “officer of the court” who works between the two adversary parties as a sworn, impartial interpreter, abiding by the code of ethics, being paid by neither one of the opposing parties but only by the court.

In addition, this “impartiality” argument will not pass the *Crawford* Confrontation muster. As has been mentioned, a common argument approving “dual agency” for the police and the suspect is that the interpreter working as an agent for the police is only serving within the very narrow scope of “interpreting work of orally translating the statements of the police officer and the suspect back and forth,” and that, therefore, within this narrow scope of interpreting work, the interpreter is an “impartial and neutral language conduit” taking no special sides with either party, and thus enabling the dual agency status.⁹⁵ However, the determination of whether or not the interpreter is really an “impartial and neutral language conduit” is ultimately a determination of: 1) accuracy of translation, that there are no errors or distortions; and 2) reliability of the

⁹⁵ *Da Silva* says, “The fact that Stewart was an employee of the government did not prevent him from acting as *Da Silva's agent for the purpose of translating and communicating Da Silva's statements to Tripicchio*. See Restatement (Second) of Agency § 392 (1958) (dual agency permitted)” (emphasis added), *Da Silva*, id., 832. Also, *Nazemian* says, “Other circuits have not held that *the fact that the interpreter is provided by the government, in and of itself, is dispositive of the agency question*. See *United States v. Da Silva*, 725 F.2d at 832 (interpreter was a customs official supplied by the DEA); *United States v. Koskerides*, 877 F.2d at 1135 (interpreter was employed by the American embassy and procured by the government); *United States v. Alvarez*, 755 F.2d at 859 (translation was by one undercover agent for the benefit of another). We likewise *do not find it dispositive* in this case” (emphasis added), *Nazemian*, 527-528.

interpreter, that he or she is impartial and has no ill-motive. In post-*Crawford* courts, “reliability of evidence and or a witness” must be found only through Confrontation, not *in limine*. Again, only those who are “certified court interpreters” hired by a court as “officers of the court,” serving with an oath and by stipulations of the Court Interpreters Act,⁹⁶ can be truly regarded as “impartial,” as they are paid neither by the prosecutor nor the defendant, certified or otherwise officially qualified, sworn in every time, and translates before the judge and the jury, and the public gallery, passing a much higher muster.

For all the reasons stated above, the thesis concludes this section by summarizing that an interpreter in a police interview becomes an agent for the police first; and that this interpreter who has become an agent for the police cannot become a dual agent for the police and the suspect.

C. The Interpreter Does Not Become the Suspect’s Agent: No Control, No Consent

In this section, the thesis will further argue that an interpreter in a police interview does not become the suspect’s agent for much more fundamental reasons than just “dual agency” conflict of interest. They are: 1) no control, 2) no consent, and 3) a violation of the Fifth Amendment due process rights.

1. The Suspect Has No “Control” over the Interpreter

The first reason is that there is no “control” (instructions, supervision, etc.) exercised by the suspect over the interpreter. Because an LEP suspect can neither

⁹⁶ 28 U.S. Code § 1827-Interpreters in courts of the United States.

understand nor assess the competence of the interpreter, not to speak of the quality or accuracy of the translation, the suspect practically has no control over the work of the interpreter.

An often-heard argument for the existence of control is that the suspect is exercising his or her control over the interpreter because the interpreter can only translate what the suspect speaks. However, the interpreter is simply doing his or her job, upon request by the police, being paid by the police, no more or no less than a waiter taking a customer's order, communicating it to the chef and owner of the restaurant, and bringing the ordered dish to the customer.⁹⁷ The waiter is an employee of the restaurant, not an agent for the customer. Also, rather than the suspect, the interpreter actually has much control over the suspect, since the suspect can never express himself or herself beyond the linguistic competence of and the translation judgment by the interpreter, as is described in the following Analogy #1.

Analogy #1. "The suspect having control over the interpreter" is probably as fallacious as saying that "a pet dog has a complete control over the master who is taking him for a walk, because the master must follow the dog to wherever the dog heads for on the other end of the leash." Just as the dog can never move beyond the radius of the length of the leash held by his or her master, the suspect can never express himself or herself beyond the linguistic competence of and the translation judgment by the interpreter, both of which the suspect has no control over, and thus are giving the suspect no other choice but to rely on the interpreter blindly.

Also, it must be re-emphasized that remuneration and other necessary materials

⁹⁷ See Analogy #3, *infra*.

and equipment are all provided by the police. As has already been mentioned in Chapter II (this chapter), B-1, *supra*, one D. C. Appellate Court judge once noted, “He who pays the piper calls the tune,”⁹⁸ and in a police interview, the suspect, especially an indigent LEP suspect, can never pay the piper.⁹⁹

2. The Suspect Never “Consents” to an Agency Relationship

The second reason is that an LEP suspect in a police interview never consents to an “agency relationship” with the interpreter. First and foremost, just a mere act of “responding to police questions through an interpreter” does not constitute “consent” to an agency relationship, contrary to the commonly held “consent” argument. The thesis will contend that responding to the other party through the other party’s interpreter never makes a party the interpreter’s co-principal automatically.

Normally, a two-party communication through an interpreter goes through the following process. A need for communication usually arises from one of the two parties, and the party (Party X) who has to initiate the communication hires an interpreter, who most probably becomes Party X’s “agent” upon hiring. Party X then goes to the other party (Party Y) with Party X’s interpreter, who will be serving Party X

⁹⁸ *Ko v. United States*, 694 A.2d 73 (D.C. App.1997), 83. See fn. 88, *supra*.

⁹⁹ An indigent suspect often tries to rely on a friend or a family member to help him or her as an interpreter. However, except for a highly emergent situation, police organizations seem to refrain from using those who may potentially be “biased for” the suspect, which would not satisfy Test 2 of the *Nazemian*’s 4-Tier Test (see Chapter I, C-3, *supra*), while they seem to find no problem using their own employees as interpreters, as was mentioned in Chapter II (this chapter), B, *supra*. An interesting question here is what an average response and practice of the police in the U. S. would be if a very wealthy LEP suspect decides to hire his own “highly qualified, professional interpreter” to sit with him throughout the police interview to work as his interpreter or even as a “check interpreter” on the “police-provided interpreter.”

as if the interpreter was Party X's "Extended Mouth and Ears." Party X, using his own "Extended Mouth and Ears" initiates a verbal communication with Party Y, and Party Y responds to Party X who has come with the "Extended Mouth and Ears." Here, Party Y is simply commencing a verbal response to Party X in Party Y's own native language, just as Party Y always does when Party Y talks to anyone who speaks the same language. For Party Y, the whole process is no different from ordinary daily conversation, which never invokes a "sudden, unconscious appointment of someone as his "agent."'¹⁰⁰ To illustrate this point, the thesis will present two analogies.

Analogy #2: Party X with a "Hearing Aid" and a "Speaking Aid" speaks to Party Y. Imagine Party X is both "Auditorily Impaired" and "Laryngectomized," which necessitates him to use a "Hearing Aid" and a "Speaking Aid." Party X, wearing a "Hearing Aid" and a "Speaking Aid" initiates a verbal communication with Party Y, and Party Y responds to Party X. Here, Party Y is simply commencing a verbal response to Party X just like Party Y always does when he speaks to anyone. If what Party X heard or understood through his "Hearing Aid" and a "Speaking Aid" was different from what Party Y actually said, due to a mechanical trouble of his own "Hearing Aid" and or "Speaking Aid," will Party Y become liable for the misunderstanding caused by Party X's own mechanical trouble?

Analogy #3: a restaurant waiter bringing a wrong dish. A chef and owner of a

¹⁰⁰ What if two parties concurrently see a need to approach the other party and talk with each other, e.g., bilateral negotiations between companies or countries? In all international negotiations, each nation's government brings its own interpreter, and never uses the other country's interpreter "as a handy, money-saving" option. The seeming "interpreter redundancy" usually functions as a "check." The same is true of business negotiations. If one of the parties has more urgent need to approach the other, then the communication will normally commence with the initiating party (Party X) bringing their interpreter to Party Y, and the negotiation will take place in Party Y's language, which also will most probably become the official language of their contract. In this case, too, Party Y does not appoint Party X's interpreter as Party Y's agent, and only what was said and exchanged in Party Y's language will most probably remain as an official record.

small restaurant has employed a waiter helping him as his employee. The waiter is an agent for the chef and owner, who is the waiter's principal. The waiter takes an order from a customer and communicates it to the chef and owner, just as an "interpreter" functions as a "communication intermediary." A customer gives his order with an "assumption" that his order will be "accurately communicated" by the waiter to the chef and owner. The waiter brings a dish which apparently was not what the customer ordered. Would the customer be liable for the waiter's error as the customer had already become the waiter's "co-principal" for the reason that the customer had "assumed" that the waiter would take an accurate order?

If we use the "agent interpreter" theory's standard, both the "Party Y" in Analogy #2 and "the customer" in Analogy #3 will become liable as a 'co-principal.' As was written in "*Vose*" (the original "agent theory"), the standard stipulates that "when two persons who speak different languages and who cannot understand each other converse through an interpreter...they choose a mode of communication, they enter into conversation, and the words of the interpreter, which are their necessary medium of communication, are adopted by both, and made a part of their conversation as much as those which fall from their own lips. They cannot complain if the language of the interpreter is taken as their own... [i]nterpretation under such circumstances is *prima facie* to be deemed correct."¹⁰¹ This "*Vose* agency standard," if it was really valid, would become applicable to almost all "interpreter-assisted" bilateral communication "unconditionally."

¹⁰¹ *Commonwealth v. Vose, id.*, 394-395.

3. Consent to Agency Relationship: Equal to a Forced Waiver of Right against Verballing

This thesis will further argue that the suspect's making the police interpreter his or her agent is equal to a forced waiver of a "right to accuracy-verified translation" of the suspect's testimonial statements, which the thesis will argue is a separate, "non-waivable" Fifth Amendment due process right, independent of "Miranda."

This "right to accuracy-verified translation" is a "separate, non-waivable" due process right. The "agency theory," which automatically assumes the suspect's acceptance of the interpreter's upcoming English translation as *prima facie* accurate, without "actual verification of the translation accuracy," permits "potential verballing," an act of "putting or forcing someone else's words into the suspect's mouth," which is a violation of the suspect's Fifth Amendment due process rights. The Miranda warning only explains the legal consequences of the "Miranda waiver," which only applies to the suspect's own, voluntary statements made in his or her own language. The Miranda warning never explains the dire legal consequences of "vicarious admission" effectuated through FRE 801(d)(2)(C) or (D). Without the suspect's "knowing and intelligent"¹⁰² understanding of all the grave consequences of making the interpreter his or her agent during the police interview, the interpreter can never become the suspect's agent.

Not only that, this "right to accurate translation" is a "separate, non-waivable right." The "Miranda waiver" is a waiver of "the right to silence," which can be "waived" if so done "knowingly and intelligently," whereas the "right to accurate

¹⁰² "The mere fact that he signed a statement which contained a typed-in clause stating that he had [']full knowledge['] of his [']legal rights['] does not approach the *knowing and intelligent waiver* required to relinquish constitutional rights" (emphasis added). *Miranda v. Arizona*, 384 U.S. 436 (1966), 492.

translation” is a “right against potential verballing,” which is a “non-waivable” right the Fifth Amendment guarantees. Therefore, the police or prosecutor’s “unilateral presumption” of the suspect’s “consent” to an agency relationship with the police interpreter is no different from a “forced waiver of the suspect’s right against verballing,” which is a violation of the suspect’s Fifth Amendment due process rights. Ultimately, the only way the suspect can guard against such “potential verballing” caused by “potentially inaccurate translation” is through the “exclusion of evidence.”¹⁰³

4. FRE 801(d)(2)(C) or (D) Will Not Pass the “Miranda” Standard

Furthermore, the “Miranda waiver” requires a much higher standard than what may be sufficient for “consent” in ordinary commercial transactions, i.e., the standard for “agency relationship” stipulated by the agency law.

The “Miranda waiver” is a “knowing and intelligent waiver required to relinquish constitutional rights”¹⁰⁴ to incriminate oneself. Because a “right against self-incrimination” is a foremost fundamental constitutional right, the Supreme Court specifically set a much higher standard than what may be acceptable in ordinary commercial transactions. For example, in *Miranda*, even a “document signed by Ernesto Miranda” with a clearly printed statement of “full knowledge of his legal rights” did not reach the standard set forth by the Supreme Court as a “knowing and intelligent waiver” required to relinquish constitutional rights.¹⁰⁵

¹⁰³ “Like the Fourth Amendment, the self-incrimination provision is *enforced* through the *exclusion of evidence*” (emphasis added). Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice* (Thousand Oaks, CA: CQ Press, 2013), 518.

¹⁰⁴ *Miranda v. Arizona*, *id.*, 492.

¹⁰⁵ “The mere fact that he signed a statement which contained a typed-in clause stating that

Put in this perspective, a suspect's "unknowing and unintelligent consent" to forfeit a constitutional right against "potential verballing" can never pass the Supreme Court's high standard set forth by *Miranda*,¹⁰⁶ as any consent, if made "unknowingly" of all the dire legal consequences of waiving one's Fifth Amendment rights, would become invalid. Such "invalid" consents include all "unknowingly made consents," such as those the police only "inferred" from the suspect's mere expression of "relief, gratitude, or nodding"¹⁰⁷ or even more explicit statements, oral or written, "consenting to speaking through the interpreter," unless they were made "knowingly and intelligently"¹⁰⁸ of all the grave legal consequences of becoming the interpreter's principal with accompanying liability of *respondeat superior*, i.e., that the interpreter's translated statements will be attributed to the suspect, with *prima facie* "translation accuracy."

Because the suspect is not able to verify the interpreter's translation accuracy throughout the entire interview, the suspect must be made to understand that he or she would be "writing an exorbitant blank check," placing an enormous "blind" trust in the ability of a complete stranger he or she has just met.

he had [']full knowledge['] of his [']legal rights['] does not approach the knowing and intelligent waiver required to relinquish constitutional rights." *Miranda v. Arizona, id.*, 492.

¹⁰⁶ *Miranda v. Arizona, id.*, 492.

¹⁰⁷ In *Da Silva*, the suspect gave an expression of relief "Thank God" when the interpreter came in and told the suspect that he spoke Spanish, and the court ruled that the interpreter became a co-agent for the suspect and the police because "Da Silva was plainly much relieved to have a translator, and, after receiving Miranda warnings from Stewart, spoke freely with Tripicchio through Stewart." *United States v. Da Silva*, 725 F2d 828 (2d Cir. 1983), 829, 832.

¹⁰⁸ *Miranda v. Arizona, id.*, 492.

5. Hobson's Choice

This thesis' last argument denying the suspect's "consent" to an agency relationship with a police interview interpreter is that Hobson's choice is no choice, meaning that it is only an involuntary act forced by the circumstance.

The "Miranda waiver" is not an automatic consent to "agency relationship." The suspect's "right against potentially inaccurate translation" is a "separate, non-waivable" right. When an LEP suspect consents to waiving his or her Miranda rights, the suspect now must respond to the interrogating police officer's questions. If the suspect cannot communicate in English, the suspect has "no other choice" but to speak through this interpreter procured by the police. There is "no other way" for the suspect to exercise his or her "Miranda waiver," i.e., to speak to the police officer or answer the police officer's questions, than to speak through this interpreter. The following analogy will attempt to illustrate the distinction between a "Miranda waiver" and the separate "non-waivable right to accurate translation."

Analogy #4: Shylock¹⁰⁹ failing to cut off one pound of flesh. Just as it was impossible for the Venetian moneylender Shylock in William Shakespeare's play to remove one pound of flesh only from Antonio's body without shedding a drop of blood from his body,¹¹⁰ the suspect cannot exercise his or her "Miranda waiver" unless he or she speaks through the interpreter provided by the police. Shylock could not execute

¹⁰⁹ A Venetian merchant in William Shakespeare's *The Merchant of Venice* (between 1558 and 1598). For the book's publication date, see *Dating Shakespeare's Plays: A Critical Review of the Evidence*, ed. Kevin Gilvary (Turnbridge Wells, Kent: Parapress, 2010), 137, which notes that *The Merchant of Venice* could have been written anytime between 1558 and 1598.

¹¹⁰ "This bond doth give thee here no jot of blood; The words expressly are 'a pound of flesh:' Take then thy bond, take thou thy pound of flesh; But, in the cutting it, if thou dost shed One drop of Christian blood, thy lands and goods [a]re, by the laws of Venice, confiscate [u]nto the state of Venice." William Shakespeare, *The Merchant of Venice* (between 1558 and 1598), Act IV Scene I. For the book's publication date, see fn. 109, *supra*.

his contract because he had failed to include in his contract an additional provision permitting “shedding Antonio’s blood,” which he probably had thought to have been automatically subsumed in the provision permitting “cutting one pound of flesh,” just as the “agency theory” presumes that the suspect’s Miranda waiver automatically subsumes the suspect’s agreement to an agency relationship, or more correctly the suspect’s waiver of a constitutional right against “potential verballing.”

According to the wise judge Portia, however, “cutting one pound of flesh from Antonio’s body” was not automatically inclusive of “shedding Antonio’s blood”; each required a separate provision. In a similar way, a “Miranda waiver” cannot automatically assume a “waiver of a right to accuracy-verified translation, or more correctly, a right against potential verballing,” unless the latter waiver is made in a clearly separate, knowing, and intelligent way, though it is fundamentally a “non-waivable” right.

However, in the current “agency theory” case law, these two rights are presumptively merged under the “Miranda” label, putting the LEP suspect in the same predicament as that of Antonio before the arrival of Judge Portia. Had it not been for the wisdom of Portia, Antonio had not only offered one pound of his flesh to Shylock but also had relinquished all his blood and his life all together, with an “uninformed,” desperate conviction that he had “no choice.”

Just like Antonio before the arrival of Portia, if the suspect decides to waive his or her Miranda rights, the suspect has no choice but to speak through the police interpreter. It is certainly true, at least theoretically, that the suspect could refuse to speak through this particular interpreter and ask for a different, presumably a “better,” interpreter.

Nevertheless, if the suspect does not know English, there is no real, viable way for him or her to assess the quality of the present interpreter's translation or its accuracy. In short, the only choice an LEP suspect has is Hobson's choice. Hobson's choice is no choice, and no choice means an involuntary, forced choice. If it was a forced choice, it means that the suspect never consented, willingly and voluntarily, to making the interpreter his or her agent.

6. A Constitutional Right to Verification of Translation Accuracy

The thesis will conclude this chapter by re-emphasizing that the right not to be "verballed, i.e., forced to make a false or inaccurate confession" is a "non-waivable," Fifth Amendment due process right, which the government has a constitutional duty and responsibility to protect. Here, a suspect must be protected not just from being "unknowingly forced to consent" to the *prima facie* accuracy of the interpreter's translation." Every suspect also has a constitutionally guaranteed right to "verify" the accuracy of the English translation of his or her original foreign-language statements before the translation is admitted into evidence.¹¹¹

¹¹¹ "Like the Fourth Amendment, the self-incrimination provision is *enforced* through the *exclusion of evidence*" (emphasis added). Epstein and Walker, *Constitutional Law for a Changing America*, 518.

Chapter III

Stop Using 801(d)(2)(C) or (D) “Agency Theory” for Interpreters

In Chapter II, the thesis demonstrated that application of FRE 801(d)(2)(C) or (D) vicarious admission based on the “agency theory” for the admission of interpreter-assisted extrajudicial testimonial statements is unworkable for the reason that no agency relationship is established between the suspect and the police-supplied interpreter. In this chapter, the thesis will examine the validity of the reasons why the U.S. courts have continued to use the “agency theory” for out-of-court interpreters and will contend that those reasons will no longer justify its continued use.

A. FRE 801(d)(2)(C) or (D) for Interpreters: Questionable Just Like FRE 801(d)(2)(E)

The doctrine of vicarious admission is based on the common law theory of *respondeat superior*, which was originally designed to protect an innocent third party in torts or to “facilitate enterprise”¹¹² by assuring third parties (e.g., customers) of the principal’s (or a corporation’s) liability for its agents’ (i.e., their employees’) potential errors and misdeeds.

However, what we see with an “agency theory” used for admission of an interpreter-assisted extrajudicial testimony by FRE 801(d)(2)(C) or (D) is an unfortunate mixture of the common law of agency developed originally for civil tort litigations and

¹¹² Judge Posner, in his criticism of “vicarious admission” doctrine used for FRE 801(d)(2)(E) criminal co-conspirators. *United States v. DiDomenico*, 78 F3d 294 (7th Cir. 1996), 303.

the rules of evidence for criminal prosecution, when different standards are often applied for each, e.g., differences in the required standards of proof: “preponderance of evidence” or “beyond a reasonable doubt.”

1. *Respondeat Superior* Vicarious Admission for an Interpreter-Assisted LEP Suspect?

It seems unfair and unreasonable, therefore, to impose the same *respondeat superior* legal liability standard on an LEP criminal suspect, for whom an interpreter is almost always a complete stranger, and who, being linguistically and culturally disadvantaged, will most likely have no idea of the enormous legal consequences of simple, human reactions such as, just “simply nodding affirmatively” or “showing an expression of relief or gratitude” at the sight of an interpreter who speaks the same language.

2. FRE 801(d)(2)(E) Co-Conspirators’ Vicarious Admission: Similar Absurdity Noted

Similar unreasonableness or absurdity in using the same “vicarious admission” principle for criminal co-conspirators by FRE 801(d)(2)(E) has been pointed out by Judge Posner in *United States v. DiDomenico*,¹¹³ in which he wrote, “[t]his translation of commercial principles of agency into the law of evidence is one of the less impressive examples of what Coke called the ‘artificial reason’ of the law.”¹¹⁴

Judge Boudin in *United States v. Goldberg* also made a similar comment by

¹¹³ *United States v. DiDomenico*, *id.*

¹¹⁴ Judge Posner further notes, “[t]he concern behind the hearsay principle is with the reliability of evidence rather than with the facilitation of enterprise—and anyway the law of conspiracy is designed to discourage rather than to facilitate enterprise.” *DiDomenico*, *id.*, 303.

noting that “analogy” deriving from “agency law” is “(as the Advisory Committee noted) at best a fiction... the co-conspirator exception to hearsay is of long standing and makes a difficult-to-detect crime easier to prove,”¹¹⁵ hinting that the theory application’s only justification is simply its pragmatic “expedience.”

B. Long-Upheld Exigent Need Cannot Keep Justifying the Use of Irrational Legal Tool

Absurd as it may seem, this legal tool of vicarious admission in criminal prosecution involving an interpreter’s hearsay issue was invented out of necessity, since the traditional common law hearsay rule presented too high a bar for cases involving LEP suspects and witnesses.¹¹⁶

1. Legal Invention Motivated by Exigent Needs

For instance, in numerous situations, but for the only extra layer placed by the interpreter, the suspect’s testimony might have been completely sound, with its admission into evidence seeming to have better served justice.¹¹⁷ When such circumstances arose repeatedly, some sort of persuasive legal theory had to be invented urgently.

¹¹⁵ *United States v. Goldberg*, 105 F3d 770 (1st Cir. 1997), 776.

¹¹⁶ See, for example, *Correa v. Superior Court of Orange County*, 84 4th 631 (Cal. App. 2000), 639, ruling in favor of strict application of hearsay rules, saying “[w]e are not unsympathetic to the inconvenience and burden our ruling may cause non-English-speaking witnesses and victims who will have to personally appear at preliminary hearings to testify.”

¹¹⁷ “From a practical standpoint, were we to adopt the approach...rigidly requiring either that a court appoint or the defendant himself actually provide the translator in order to attribute the statements to the defendant, it would result in a largely arbitrary distinction between the admissibility of statements by English and non-English speakers and between non-English speakers who bring their own translator and those who do not,” *Nazemian, id.*, 527.

This urgent need for some kind of legal invention or measure has existed not only in the U.S.; all common-law jurisdictions in the world have struggled. As has been mentioned already, Australia adopted the “language conduit” theory though it has also been criticized as a “legal fiction.”¹¹⁸ The U.K. made a decision in 1958 to abide by strict application of hearsay doctrine¹¹⁹ with a ruling that required prosecutors to make sure that their interpreters could and would testify in court if and when the court subpoenaed them.

In addition, foreign language needs in criminal justice administration are becoming increasingly diverse.¹²⁰ Not using the current “agent-and-conduit theory” may seem unrealistic and unfeasible in today’s criminal prosecution with an increasing linguistic diversity.¹²¹

2. Exigent Needs Cannot Justify an Irrational Legal Invention

Still exigent needs cannot continue to justify the use of an irrational legal invention, especially in light of the fact that some U.S. courts have faithfully abided by the strict common-law hearsay rules.

Judge Campbell of Courts of Appeals of Oregon in *State of Oregon v.*

¹¹⁸ Kathy Laster and Veronica L. Taylor, *Interpreters & the Legal System* (Sydney: Federation Press, 1994), 113.

¹¹⁹ *R v. Attard*, Central Criminal Court (1958) 43 Cr. App. R. 90.

¹²⁰ “California’s population continues to grow in number and diversity, with many languages spoken in our state.” *People v. Torres*, 213 Cal. App. 3d 1248, 262 Cal. Rptr. 323 (Cal. App. 1989), 330.

¹²¹ *People v. Torres, id.*, “Moreover, the holdings are *unrealistic and unworkable*. California’s population continues to grow in number and diversity, with many languages spoken in our state...[t]he interpreter is not asked and should not be expected to memorialize and remember the content of every communication” (emphasis added), 330.

Letterman,¹²² for instance, after mentioning those cases that had followed the strict traditional hearsay rule,¹²³ also chose not to use the “agency theory” but to apply other “hearsay exceptions” in admitting “hearsay,” by stating that “[w]ere this court to adopt the rule stated in...*Commonwealth v. Vose*, there would be ample reason for deeming the interpreter to be the joint agent of both Officer Laudenback and defendant... *Rather than rest the admissibility...on an implied agency*, however, we find that the testimony is admissible because it satisfies the two requirements common to most, if not all, of the exceptions to the hearsay rule: (1) circumstantial guarantees of trustworthiness, and (2) necessity for use of the out-of-court statement” (emphasis added).¹²⁴

People v. Torres, on the other hand, called such cases that strictly abided by the traditional hearsay rules as mentioned in *Letterman* “ancient...no longer withstand[ing] legal scrutiny” with “brusque opinions” and “little analysis of the agency theory”¹²⁵ which no longer satisfactorily responded to the increasing demand to cope with the growing foreign-language speaking population.¹²⁶ Unfortunately, this is more or less the view that continues to remain a position shared by a majority of courts in the U.S.

Having discussed all the involved exigent needs that have necessitated an expedient legal tool, however, the thesis concludes this chapter by contending that needs,

¹²² *State v. Letterman*, 47 Ore. App. 1145; 616 P.2d 505 (Ore. App. 1980).

¹²³ Mentioned here are such cases as: *People v. Petruzo*, 13 Cal App 569, 110 P 324 (1910); *People v. John*, 137Cal 220, 69 P 1063 (1902); *State v. Fong Loon*, 39 Id 248, 158 P 233 (1916); *State v. Terline*, 23 R.I. 530, 51 A 204(1902); and *People v. Ah Yute*, 56 Cal. 119 (1880). *Letterman, id.*, 1149.

¹²⁴ *Letterman, id.*, 1151.

¹²⁵ *People v. Torres, id.*, 329.

¹²⁶ *People v. Torres, id.*, 330.

no matter how exigent, cannot continue to justify the use of an irrational legal theory.

Chapter IV

Make Interpreters Genuine “Conduit” for FRE 801(d)(2)(A)

A. Back to Common Sense: “Conduit (Accurate and Impartial)” Interpreter

Needed by All

Just a speck of imagination can help us realize the magnitude of this problem in a common-sense perspective.

1. Putting Oneself in an Imaginary Situation: Arrested in a Foreign Country

Let us imagine that you have been suddenly arrested and confined in a police interrogation room in some faraway foreign country. You do not know their language, so you can neither understand nor read any of the cryptic foreign language written or spoken by the police officers around you. You cannot call your family or friends as the cellphone has also been confiscated (or “snatched away”) for a reason that of course you did not understand when one of the officers was probably shouting the reason at you. You are feeling outraged, confused, and frightened all at the same time. After a long, long wait, finally a person who speaks your language (albeit imperfectly, with a foreign accent) comes in and says he will be serving as your “interpreter.” What other choices would you really and realistically have now than to try to start a line of communication with the surrounding officers through this “interpreter”?

Commencing a verbal exchange through this “interpreter” is no more than “a drowning man catching at a straw.” Would you ever regard this act of “commencing a line of communication” as an unconditional acceptance of this “interpreter” as your

“agent” as if writing an unconditional “blank check,” an act that forces you to waive your right to later “verify the accuracy of his translation,” either by questioning him or her directly in court or by some other “objective means of accuracy verification,” before the court declares you guilty? What, for example, if you had been arrested for possession of an illegal drug in a country where the highest punishment for this crime is death penalty?

2. Everyone Wants an “Accurate and Impartial (Conduit)” Interpreter, Not an “Agent”

Just a miniscule of imagination in an LEP suspect’s shoes would be sufficient to realize that what would really matter ultimately for the administration of justice in an interpreter-assisted police interview is “accuracy and impartiality (or ‘conduit’)” which are verifiable, not some strange “agency relationship” that would mysteriously vacate the need for such accuracy verification. This is true not only for the suspect but also for the police and the prosecutor, as misadministration of justice caused by evidence of substandard accuracy and reliability could be equally damaging to them as well.

A much more difficult issue that this thesis will discuss and try to resolve in the upcoming chapters is “how” to verify. “Conduit” means “accuracy” and “impartiality,” and verification of “accuracy” and “impartiality” inevitably requires confrontation in this post-*Crawford* era. Still, how can “accuracy” and “impartiality” be verified, i.e., by confronting whom and what? Should it be done by cross-examining the very interpreter who served during the police interview, or should it be done by creating some other “independent evidence” by, for example, recording, transcribing, and authenticating the interpreter’s recorded translation by a separate, independent expert witness? In order to discuss this very difficult question further, the thesis will now

present the “interpreter’s perspective and standpoint.”

B. Interpreters: Trained to Serve as a “Conduit,” to Realize FRE 801(d)(2)(A)

Even in a world like today’s with an ever-increasing language diversity, few people really seem to know what professional interpreters are, how they do their work, or how they are trained.¹²⁷

1. Trained to Be a “Conduit,” to Be Identical with the Original Declarant

Though the “role of an interpreter” itself is one of the on-going academic subjects in the field of interpreting studies,¹²⁸ one thing all professionally trained interpreters, especially those trained for legal interpreting, can testify to would be that they have been trained specifically to serve as an “accurate” and “impartial” language “conduit.” Interpreters are specifically trained to contemporaneously translate a source-language statement into a target-language statement with an “identical” meaning, and this is where a fundamental difference resides between “ordinary hearsay” and “interpreter-translated” statements. Interpreters are trained to instantaneously “reproduce” the declarant’s statement in the target language, with a professional

¹²⁷ Harry Obst, who served seven U.S. Presidents, from Lyndon Johnson to Bill Clinton, as a German interpreter, writes in *White House Interpreter*, “Few people, especially in the United States of America, have a good understanding of what a professional interpreter is and what that person does.” Harry Obst, *White House Interpreter: the Art of Interpretation* (Bloomington, Indiana: AuthorHouse, 2010), 33.

¹²⁸ For example, Sandra Hale, an Australian interpreting studies scholar, described five different interpreter roles in “Controversies over the Role of the Court Interpreter” as: 1) advocate for minority language speakers, 2) advocate for service providers, 3) gatekeepers, 4) facilitator, and 5) faithful renderer of others’ utterances. Sandra Beatriz Hale, “Controversies over the Role of the Court Interpreter,” in Carmen Valero-Garcés and Anne Martin, eds., *Crossing Borders in Community Interpreting: Definitions and Dilemmas* (Amsterdam: John Benjamins Publishing, 2008), 99-121.

knowledge of what “linguistic equivalence (identical meaning)” in “interlingual translation” entails. In other words, interpreters are specifically trained to enable the “original declarant” in the source language to also become the “declarant” in the target language.

This is why interpreters never use the “first person, singular pronoun” to refer to themselves. When interpreters use the pronoun “I,” it always refers to the original declarant.¹²⁹ When interpreters wish to refer to themselves, they use the expression “the interpreter,” which is in the third person. What all this training indicates is that interpreters are trained to enable the “original declarant” in the source language to also become the “declarant” in the target language, endeavoring, if it is possible, to achieve the realization of FRE 801(d)(2)(A), as a truly accurate and impartial language “conduit.”

Though not exactly the same but similar examples can be found among newscasters who have been trained to read a news script verbatim with utmost accuracy or live sports reporters broadcasting every single movement of the athletes on the field with accuracy and contemporaneity. An interpreter is specifically trained to deliver a contemporaneous (instantaneous or on-the-spot) translation from the source language to the target language with an “identical (equivalent)” meaning.

2. An Interpreter Cannot Replace the Interviewing Police Officer

Since the interpreter’s only job is to keep translating, back-and-forth, with speed and accuracy, an interpreter cannot replace the interviewing police officer. This

¹²⁹ This first person, singular pronoun “I,” is referred to as “the alien I” by interpreters.

continuous “back-and-forth” interlanguage translation with required accuracy and speed occupies the interpreter’s cognitive faculty completely and maximally. Interpreters can do no more, because they can do no less.

For this reason, even if an interpreter is to be summoned for an in-court testimony, the testimony would have to be of completely different nature from that of a police officer’s. Interpreters cannot and should not be expected to “remember,” “memorize,” or “record” actual statements made by the suspect for the purpose of testifying to them; this is specifically a job of the interviewing police officer¹³⁰ If subpoenaed, the best any interpreter could possibly do is to: a) testify to one’s qualifications and experience; b) testify that the translation was made accurately and faithfully to the best of the interpreter’s ability; and c) testify, if asked, as to why and how a particular expression was translated in the way the interpreter chose to translate. Anything more than these would be far beyond the capacity of a language interpreter.

Thus, while everyone would need and want a “conduit (accurate and impartial)” interpreter, still “how” to verify such accuracy and impartiality remains a very difficult issue, which this thesis will try to resolve. Before answering this question, however, the thesis will next demonstrate that a “conduit” interpreter for the application of FRE 801(d)(2)(A) is indeed in harmony with the copyright law on translation as well.

¹³⁰ On this particular point, Judge Scotland in *Torres* had a truly correct understanding of interpreters’ roles and the nature of their work in saying that “[t]he role of the interpreter simply is to accurately convey the substance of the communication between interested parties and the court. The interpreter is not asked and should not be expected to memorialize and remember the content of every communication. That is the role of the official court reporter. It would be impractical and virtually impossible to impose such a duty on court interpreters. In fact, to expect and require interpreters to be able to recall every communication they interpret would place upon them an immense burden which could adversely affect their ability to quickly, accurately, and intelligibly communicate the statements they translate. In addition, it simply is infeasible to expect that a court interpreter could recall the content of the many conversations which an interpreter must communicate day-in and day-out.” *People v. Torres*, 213 Cal. App. 3d 1248 (Cal. App. 1989), 1261.

Chapter V

“Conduit” for FRE 801(d)(2)(A): in Harmony with Copyright Law on Translation

Though interpreting (oral) and translation (written) are fundamentally two very different activities,¹³¹ they also share common attributes, the most important of which is that both try to achieve “interlanguage equivalence.” “Interlanguage equivalence” means “identicalness (equivalence)” of the “meaning” between the source-language statement and the target-language statement.

A. Copyright Law’s Inferences for FRE 801(d)(2)(A) Original Declarant in Translation

In the field of the copyright law, this “identicalness” between the source-language work and the target-language work is what makes a “translation” a “derivative” work of the “original, copyrighted” work, enabling the “original” work’s copyright to also “legally bind” the “translation” as a derivative work of the original.

Both the Berne Convention and the U.S. Copyright Act recognize “translation work” as a “derivative (adaptive) work” of the “original.”¹³² Translation is copyrightable independently of the “original” but only as a “derivative” work of the copyrighted “original” work, and the “translation work” preserves with it the right of the author of the “original (underlying) work.” This copyright law for a “translation” work

¹³¹ The Supreme Court also made a clear distinction between “interpreting (oral)” work and “translation (written)” work in *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. ____ (2012).

¹³² Berne Convention for the Protection of Literary and Artistic Works Paris Act of July 24, 1971, as amended on September 28, 1979., Article 2, Paragraph 3. United States Copyright Act, 17 U.S.C. §101, §103.

reveals some interesting inferences to support the application of FRE 801(d)(2)(A) for an “interpreter-translated English-language statement” of the “original declarant’s foreign-language statement.”

1. Original Work’s Copyright in Translation: “Original Declarant” in Translated Statement

The copyright law on the “original (underlying) work’s copyright” in translation (the “derivative” of the “original”) stipulates as follows. Translation as a derivative work requires a permission from the original work’s copyright owner. When completed, the translation itself becomes copyrightable on its own, but this new copyright in the translation “covers only the additions, changes, or other new material appearing for the first time” in the translation and “does not extend to any preexisting material.”¹³³ At the same time, the original work’s copyright does not become extended by the creation of its translation, so if and when the original work’s copyright expires, the original (underlying) work enters the public domain, which means that the elements in the translation that are the “pre-existing material” of the “original” also enter the public domain.

The translation’s copyright covering “the additions, changes, or other new material appearing for the first time” that were independent of the original work’s copyright will remain effective even after the original work enters the public domain, but of course this “translation’s independent copyright” only protects what the translator newly “added” or “changed,” not what the original work had as a “preexisting material”

¹³³ United States Copyright Office, “Copyright in Derivative Works and Compilations” (October, 2013), 2. <http://www.copyright.gov/>

that the original work's copyright protected.

This thesis contends that the original work's copyright that continues to exist in its translation is identical to the continued existence of the "original declarant" in a translated statement, with all the "protectible elements" of the "original" statement made by the "original" declarant remaining perfectly intact in its translation.

2. Protectible and Unprotectible "Elements" in the "Original Work"

Then, what exactly are the "protectible elements" and "unprotectible elements" in the "original work"? One of the most important principles of the copyright law is that the law protects only "expressions of ideas," not "ideas or facts."¹³⁴ Then, what elements of the "original" become "protectible" or "unprotectible," and how can we sort them out? The best answer ever to this question was given by Judge Learned Hand in the form of what is called an "abstraction test" which he demonstrated in *Nichols v. Universal Pictures Corp.*¹³⁵ He described the process as follows.

"[A] great number of patterns of increasing generality" appears as "more and more of the incident is left out" until we get "no more than the most general statement of what the play is about" or just its "title."¹³⁶ "[I]n this series of abstractions," we reach a point where "they are no longer protected," because "otherwise the playwright could prevent the use of his 'ideas' to which, apart from their expressions" his copyright never extends.¹³⁷

¹³⁴ 17 U.S. Code § 102 - Subject matter of copyright: In general

¹³⁵ *Nichols v. Universal Pictures Corp.*, 45 F.2d 119.

¹³⁶ *Nichols v. Universal Pictures Corp.*, *id.*, 121.

¹³⁷ *Nichols v. Universal Pictures Corp.*, *id.*, 121.

Nicholas was a case about whether or not copyright infringement had taken place between two plays, and Judge Learned Hand used the above “abstraction test” to determine the boundary between “unprotectible elements,” such as “universal concepts and stock characters” and more original “protectible elements.” A similar “abstraction test” was carried out more recently in the same Second Circuit to determine whether an English economic news article had infringed on the copyright of a Japanese economic news article, which provides very interesting insights into the determination of “original declarant” in the “translated statement.”

3. *Nihon Keizai v. Comline*: Protectible Elements of Original Work in Translation

The issue in *Nihon Keizai v. Comline*¹³⁸ was whether the defendant (Comline)’s “English articles,” which the plaintiff (Nihon Keizai) alleged were merely “translations without the plaintiff’s permission,” infringed on the plaintiff’s copyright. The defendant insisted that their English “articles” only used “facts” obtained from the original Japanese articles, and thus were not infringing. In order to discern whether the protectible elements of the original work were detectable in the English “articles,” Judge Cote conducted the “abstraction test” and found the following.

While Comline articles were “usually shorter” and often “omit[ted] certain facts and information,” Comline articles: 1) used the same “structure and organization”; 2) used the same “chronological and substantive grouping of facts”; 3) used the same “conclusions or resolutions”; 4) and often used “identical phraseology and word

¹³⁸ *Nihon Keizai Shimbun, Inc. v. Comline Bus. Data*, 98 Civ. 641 DLC, U.S. Dist. (S.D.N.Y. 1998).

choice.”¹³⁹ Thus, Comline appropriated Nihon Keizai’s: 1) “means (manners) of expression,” 2) “organizational structuring,” and 3) “marshaling of facts.”¹⁴⁰

Nikkei v. Comline ruling shows very interesting inferences for the determination of the “identicalness (conduit)” of the interpreted statement to the suspect’s original statement for the application of FRE 801(d)(2)(A). If an interpreter not only conveys the “facts” accurately but also “faithfully retains” in the English translation the above-listed “protectible elements” of “the suspect (the original declarant)’s statement in the foreign language,” then the English translation can fairly be deemed “identical” to “the original declarant’s statement,” because the said translated statement is now deemed so “identical” to the suspect’s original foreign-language statement that it would even invoke “copyright infringement.”

B. Protectible Elements of Translation’s Copyright Independent of the Original

Then, the next important questions are: 1) what does an interpreter’s translated statement has that the suspect’s original statement did not have?; and b) would this difference invalidate the application of FRE 801(d)(2)(A)?

If a translation is to become copyrightable as a derivative work of the original, the translation must have “a certain level of creativity”¹⁴¹ that would constitute its own protectible elements. This, of course, does not mean that a translation must become “different” from the original work to the extent that it no longer qualifies to be a

¹³⁹ *Nihon Keizai Shimbun, Inc. v. Comline Bus. Data, id.*, 31-32.

¹⁴⁰ *Nihon Keizai Shimbun, Inc. v. Comline Bus. Data, id.*, 33-34.

¹⁴¹ Guillermo Cabanellas, *The Legal Environment of Translation* (New York: Routledge, 2014), 55.

translation, e.g., turning into some other type of “adaptive” work, such as a children’s picture book of Charles Dickens.¹⁴² Here, the key factor is that a translation always “requires a level of choice between different alternatives.”¹⁴³

The thesis contends that the required “creativity” in translation or interpretation is the “added value” by the translator or the interpreter, which entails: a) making accurate comprehension judgement on the source language statement from among numerous possible interpretation choices of its semantic and pragmatic meaning; and b) making the best possible choices of lexical items, syntactic structures, discourse patterns, etc., in the target language to create a target language rendition that is equivalent to the source language statement.

In the case of an interpreter, these linguistic judgements and choices must be made instantaneously, which of course requires many years of training and experience. Without this “added value” created by an interpreter, the target-language rendition would become just like a “free translation software-generated” translation, the quality of which is usually unacceptable, with a text so undecipherable and incomprehensible with mechanical misinterpretations and mischoices of words. This is where a professionally trained translator or an interpreter becomes indispensable, and in an interpreter-assisted police interview, if the interpreter is a genuine “conduit,” such professional linguistic judgements and choices are the only thing that becomes added by the interpreter to the original declarant (the suspect)’s statements. No more or no less.

¹⁴² Cabanellas, *The Legal Environment of Translation*, 57.

¹⁴³ Cabanellas, *The Legal Environment of Translation*, 57.

Chapter VI

Police Interpreter Issues: Qualifications, Competence, and Impartiality (Bias)

In Chapter V, *supra*, the thesis explained that to determine whether the copyright on the “expressions” of the original work extends to the “expressions” used in a different language, and thus making it a “translation” of the original, the key factor is the “identicalness or sameness” in the “means (manners) of expression,”¹⁴⁴ the realization of which requires truly professional expertise. This chapter, therefore, will examine whether such expertise is existent in the current police interpreting in the U.S.

A. Qualifications: Professional Training to Become a High Quality “Conduit”

The field of study that is devoted to a scientific analysis of the “same meaning” between two languages is called “Translation and Interpretation Studies.” Though translation is usually regarded more an art than a science,¹⁴⁵ this, in a sense, can be said about almost any professional occupation that requires high-level skills that can only be acquired through professional training and long-time experience, including doctors, lawyers, accountants, engineers, teachers, athletes, and so on.¹⁴⁶ Just as the curriculum,

¹⁴⁴ *Nihon Keizai Shimbun, Inc. v. Comline Bus. Data, id.*, 34.

¹⁴⁵ “*Translation from one language to another is much less of a science than conducting laboratory tests, and so much more subject to error and dispute.*” (emphasis added), *Orm Hieng, id.*, 1147.

¹⁴⁶ Harry Obst, who served seven U.S. Presidents, from Lyndon Johnson to Bill Clinton, as a German interpreter writes that “complete and accurate interpretation” calls for the “same careful methodology as is used by physicians, lawyers, engineers, and other highly skilled professionals.” Also see fn. 89, *supra*.

training, and certification of these professionals are based on long-established theoretical principles in each field of science, so is and must be the training of professional interpreters. The academic field that specializes in this training is the above-mentioned “Translation and Interpretation Studies,”¹⁴⁷ originally a sub-field of linguistics but is now growing as an independent interdisciplinary study, encompassing even such fields as cognitive science.¹⁴⁸ This academic discipline is specifically devoted to the scientific analysis of the “sameness” of the “meaning” in interlingual translation, and based on such scientific findings and theories this discipline trains professional interpreters.

Only with such professional training, an interpreter can serve in court or testify as an “expert witness” about the translation accuracy in question. An adequately trained interpreter can make more adequate linguistic judgements and choices than otherwise, and render translations in the target language by: a) maintaining “style, register, manner of speech,” using “closest English equivalents for idiomatic expressions or conveying the meaning directly if no exact idiomatic expression is found,” avoiding “errors and misstatements.”¹⁴⁹

Just as only professionally trained and legally certified doctors, and not “witch doctors and faith healers,”¹⁵⁰ should be allowed to perform medical operations, only

¹⁴⁷ This is the field of science the author of this thesis specializes in. Also see fn. 89, *supra*.

¹⁴⁸ See, for instance, Franz Pöchhacker, *Introducing Interpreting Studies* (New York: Routledge, 2004), 67-83.

¹⁴⁹ Ramirez, ed., *Cultural Issues*, 194-195.

¹⁵⁰ Mona Baker, *In Other Words: A Coursebook on Translation* (New York: Routledge, 2011), 3.

professionally trained interpreters should be used at every stage of criminal justice, upstream or downstream.

B. Interpreters in Police Interviews: Qualification Issue

Unfortunately, the need for using properly trained professional interpreters is still under-recognized in the upstream of criminal justice administration in the U.S., especially in police interviews, as is evidenced by the fact that even the definition of the “same meaning (accuracy)” in interlingual translation becomes vastly loose when it comes to police interviews.

1. The Status Quo of Police Interview Interpreters: Untrained Interpreters

In *United States v. Zambrana*,¹⁵¹ the court ruled that “a foreign language translation is sufficiently accurate to assist the jury if the translation *reasonably conveys the intent or idea of the thought spoken*” (emphasis added),¹⁵² and that “a translation of most foreign languages to English (and vice versa) *can never convey precisely and exactly the same idea and intent* comprised in the original text” (emphasis added).¹⁵³

In *Baltazar-Monterrosa v. State*,¹⁵⁴ the court ruled that the police interpreter’s translation, which had not been “word-for-word” with many additions and omissions,¹⁵⁵

¹⁵¹ *United States v. Zambrana*, 841 F.2d 1320 (7th Cir. 1988).

¹⁵² *United States v. Zambrana*, *id.*, 1337.

¹⁵³ *United States v. Zambrana*, *id.*, 1337.

¹⁵⁴ *Baltazar-Monterrosa v. State*, 137 P.3d 1137 (Nev. 2006).

¹⁵⁵ *Baltazar-Monterrosa v. State*, *id.*, 1140.

were nonetheless admissible, citing *State v. Sanchez-Diaz*¹⁵⁶ in which though 47 translation errors were found in the videotaped police interview played for the jury,¹⁵⁷ the Minnesota Supreme Court still ruled that “the majority of the translation errors were minor, and none of the errors, whether minor or significant, changed the fundamental nature of the appellant's confession.”¹⁵⁸

2. Legislative and Judicial Failure #1: Continuous Indifference and Neglect

One major reason for this very unideal status quo is that the Court Interpreters Act in the U.S. has never been extended to cover all judicial stages, caused by a judicial and legislative failure or neglect, despite the fact that the U.S. was a forerunner in the institutionalization of “court interpreters” with an establishment of a federal certification system.

In 1970, the Second Circuit Court of Appeals made a landmark ruling overturning a murder conviction of Rogelio Negrón, a Spanish-speaking Puerto Rican in *U.S. ex rel Negrón v. New York*.¹⁵⁹ The reason for the acquittal was that no interpreter had been provided to make Negrón “meaningfully present” during his trial, which was a violation of Negrón’s Sixth Amendment rights. This ruling motivated Congress to legislate the Court Interpreters Act of 1978, which required all the federal courts to use federally certified, competent, and impartial interpreters (“certified and otherwise

¹⁵⁶ *State v. Sanchez-Diaz*, 683 N.W.2d 824, 835 (Minn. 2004).

¹⁵⁷ *Baltazar-Monterrosa v. State, id.*, 1143.

¹⁵⁸ *Baltazar-Monterrosa v. State, id.*, 1143.

¹⁵⁹ *U.S. ex rel Negrón v. New York*, 434 F.2d 386 (2d Cir. 1970).

qualified interpreters),¹⁶⁰ providing a model framework for state courts subsequently.

However, a big problem remained. The 1978 Act applies only to “Court” interpreters and has never been extended to the “upstream” criminal justice process. Covering only “downstream” due process rights, no additional provision was ever made for competent and impartial interpreters in the “upstream” stage, leaving no rules for interpreters for a police interview following an LEP suspect’s arrest. This is a grave problem since access to an accurate and impartial interpreter at this initial stage of criminal proceedings is “more significant than...in court proceedings”¹⁶¹ as the information obtained at this stage will become critical evidence in trial. Examples of harm caused by this absence of an adequate law extends from numerous rights infringements of LEP suspects,¹⁶² such as failed Miranda administrations, use of incompetent quasi interpreters, coerced confessions taking advantage of LEP suspects’ vulnerability caused by the linguistic barrier.¹⁶³

3. Courts Continuously Inferred “Legislative Intent” for the Law’s Absence

This indifference has been demonstrated not only by the legislature but also by

¹⁶⁰ 28 U.S. Code § 1827 (a).

¹⁶¹ Kathy Laster and Veronica L. Taylor, *Interpreters & the Legal System* (Sydney: Federation Press, 1994), 136.

¹⁶² Susan Berk-Seligson, *Coerced Confessions: The Discourse of Bilingual Police Interrogations* (Berlin: Mouton de Gruyter, 2009), 15.

¹⁶³ Berk-Seligson, *Coerced Confessions*, 15-16. Also see Susan Berk-Seligson, “The Miranda Warnings and Linguistic Coercion: The Role of Footing in the Interrogation of a Limited-English Speaking Murder Suspect,” in *Language in the Legal Process* (New York: Palgrave Macmillan, 2002), 127-143; and Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago: University of Chicago Press, 2002), 225-227.

the judiciary. In 1983, the Supreme Court of Pennsylvania in *Commonwealth v. Carrillo*¹⁶⁴ stated the following in their ruling.

The Pennsylvania Law 42 Pa.C.S.A. § 8701 required “qualified and trained interpreters (certified by the National or Local Registry of Interpreters for the Deaf or similar registry) for the Deaf” in interrogation and criminal proceedings, with an oath. However, the “Legislature has not seen fit to extend the use of an interpreter to criminal proceedings, specifically interrogations where a suspect has difficulty speaking or understanding the English language. In light of the law covering the deaf, it is not presumptuous to say that the General Assembly has specifically eschewed the enactment of similar legislation in regard to non-English-speaking persons subject to interrogation.”¹⁶⁵

The *Carrillo* court further stated that to require the use of “official, licensed interpreters” is impractical and unfeasible because: 1) it is costly; and also 2) waiting for the interpreter’s arrival may lead to a violation of the 6-hour rule in *Commonwealth v. Davenport*¹⁶⁶ (inculpatory statements’ suppressibility).¹⁶⁷ The court concluded by adjudicating that [police] interpreter qualifications “do not reach constitutional proportions,”¹⁶⁸ and that, therefore, it was “better to let [‘]Legislature[’] deal with this

¹⁶⁴ *Commonwealth v. Carrillo*, 319 Pa. Super. 115; 465 A.2d 1256 (Pa. Super. 1983), 127-133.

¹⁶⁵ *Commonwealth v. Carrillo, id.*, 128.

¹⁶⁶ *Commonwealth v. Davenport*, 471 Pa. 278, 370 A.2d 301 (Pa. 1977).

¹⁶⁷ The “6-hour rule” refers to the police’s post-arrest time-limit of “suppressibility of inculpatory statements.” *Commonwealth v. Carrillo, id.*, 133.

¹⁶⁸ *Commonwealth v. Carrillo, id.*, 131.

issue.”¹⁶⁹

Similarly, in 2006 *Baltazar-Monterrosa v. State*¹⁷⁰ repeated Pennsylvania’s *Carrillo* in their ruling, stating that the Nevada Revised Statutes stipulate qualified interpreter for the deaf, but not for non-English-speakers.¹⁷¹ The court stated, “We interpret the absence of such provisions... as the Legislature’s specific intention to [‘]eschew the enactment of similar legislation[’],”¹⁷² and concluded by saying that “police interviews need not be conducted by an independent interpreter.”¹⁷³

C. Interpreters in Police Interviews: Impartiality (Bias) Issue

The preceding section discussed the “translation accuracy” problems rampant in police interviews. This section will look at another, equally problematic issue surrounding police interview interpreters, namely “impartiality” or “bias.”

1. Interpreters Can Be Impeached for Bias

Though the FRE itself has no provision for “bias” impeachment, impeachment of witnesses is possible by *Abel*.¹⁷⁴ If an interpreter is to be impeached, the following

¹⁶⁹ *Commonwealth v. Carrillo*, *id.*, 133.

¹⁷⁰ *Baltazar-Monterrosa v. State*, 137 P.3d 1137 (Nev. 2006).

¹⁷¹ *Baltazar-Monterrosa v. State*, *id.*, 1141.

¹⁷² *Baltazar-Monterrosa v. State*, *id.*, 1142.

¹⁷³ *Baltazar-Monterrosa v. State*, *id.*, 1142.

¹⁷⁴ “[T]he [Federal] Rules [of Evidence] do not by their terms deal with impeachment for [‘]bias,[’] although...the Confrontation Clause of the Sixth Amendment requires a defendant to have some opportunity to show bias on the part of a prosecution witness. With this state of unanimity confronting the drafters of the Federal Rules of Evidence, we think it unlikely that they intended to scuttle entirely the evidentiary availability of cross-examination for bias.” *United States v. Abel*,

would be relevant as possible impeachment questions. Is this interpreter: 1) a relative or a close friend of either party?¹⁷⁵ 2) under “some sort of hold,” e.g. threat?¹⁷⁶ 3) given a promise of a reward e.g. monetary, financial, material etc.?¹⁷⁷ 4) holding a “grudge” against either party?¹⁷⁸ 5) hoping to “receive leniency in a pending criminal case”?¹⁷⁹ 6) being paid by either party?¹⁸⁰ 7) “a member of an organization that is interested in the lawsuit”?¹⁸¹ 8) holding a “financial interest” in the case’s outcome?¹⁸²

2. Paid by the Police (Directly or Indirectly): “Bias Gray Zone”

Among the above eight questions, perhaps the most conspicuous one would be the sixth question about “pay” or remuneration. Under the current system, all interpreters who serve in a police interview must be paid by the police, directly or indirectly, which technically put them in the “gray zone.” Interpreters who serve in police interviews are either: a) a “bilingual police officer” (an employee of the police) serving as an interpreter; or b) an outside interpreter either employed and paid by an

469 U.S. 45 (1984), 467-469.

¹⁷⁵ Jon R. Waltz and Roger C. Park, *Evidence: Cases and Materials*, 10th ed. (New York: Foundation Press, 2004), 570.

¹⁷⁶ Waltz and Park, *Evidence*, 570.

¹⁷⁷ Waltz and Park, *Evidence*, 570.

¹⁷⁸ Aviva Orenstein, *Acing Evidence: A Checklist Approach to Solving Evidence Problems* (St. Paul, MN: West Academic, 2014), 47.

¹⁷⁹ Orenstein, *Acing Evidence*, 47.

¹⁸⁰ Orenstein, *Acing Evidence*, 47.

¹⁸¹ Orenstein, *Acing Evidence*, 47.

¹⁸² Orenstein, *Acing Evidence*, 47.

interpreting service company (which has a business contract with the police) or working completely as a free-lance paid directly by the police. As has been mentioned in Chapter II, B-1, *supra*, at least one court, the D. C. Appellate Court, has clearly articulated, “He who pays the piper calls the tune.”¹⁸³ It is an undeniable fact that there is always a strong financial “tie” between the police organization and a police interpreter in terms of: 1) “pay” in the form of a salary or a reward, and 2) potential promise of continued requests for the interpreting job (in the case of outside interpreters).

Not only that, police interpreters, whether a police employee or a non-employee, may also share the police department’s organizational interest, which may concern the seventh and eighth questions mentioned in Chapter VI (this chapter), C-1, *supra*. Usually a suspect is arrested because the police believe there is a “probable cause” that the suspect has committed a crime. If the suspect does not become indicted or convicted, it gets added to the police’s “false arrest” log, which works negatively on the organizational image.¹⁸⁴

An often-heard counterargument, of course, is that continued financial gain is only possible if the police become “truly satisfied” with the interpreter’s performance, which derives only from the interpreter’s “accurate and reliable (impartial)” translation.

D. Police Officers as Interpreters: Competence (Accuracy) and Impartiality (Bias) Issues

Before further continuing the discussion on “bias,” it is important to address

¹⁸³ *Ko v. United States*, 694 A.2d 73 (D.C. App.1997), 83. Also, see fn. 88 and fn. 98, *supra*.

¹⁸⁴ It is “natural to suppose that [arresting officer serving in court as interpreter] would be anxious to justify his former action.” *Gonzales v. State*, 372 A.2d 191 (Supreme Court of Delaware 1977), 193.

that the fundamental and continuing problem in police interpreting in the U.S. resides in the police organizations' continued use of their own employees as interpreters. Though this is not a practice unique to the U.S.,¹⁸⁵ in light of the fact that there are also other common-law jurisdictions in the world, such as the U.K. and Australia that practice a "strict rule" of using "a publicly funded independent interpreter" for "objectivity and impartiality" purposes,¹⁸⁶ and also of the fact that this practice has been strongly and unanimously criticized by interpreting scholars and professionals in the U.S.,¹⁸⁷ further discussion in this chapter probably merits a more focus specifically on "police officers serving as interpreters."

1. Common Arguments Supporting the Use of Bilingual Police Officers as Interpreters

Using "putatively bilingual police employees" as ad hoc interpreters has been and will continue to be a controversial issue, as those who criticize the practice see grave harm deriving from "(lack of) competence" and "(absence of) impartiality" problems. Still, the courts in the U.S. have consistently approved the practice. They usually

¹⁸⁵ This is also becoming an increasingly standard practice in the home country of the author of this thesis, Japan, where, except for very rare languages, the police organizations are training as well as recruiting their own staff specializing in interpreting or translation work.

¹⁸⁶ Sedat Mulayim, Miranda Lai, and Caroline Norma, *Police Investigative Interviews and Interpreting: Context, Challenges, and Strategies* (Boca Raton, FL: CRC Press, 2014), xxix.

¹⁸⁷ Chapter 20, "Language Accommodation Needs in the Custodial Interrogation Stage of the Criminal Justice System" in Roseann Dueñas González, Victoria Félice Vásquez, and Holly Mikkelsen, *Fundamentals of Court Interpretation: Theory, Policy, and Practice*, 2nd ed. (Durham, NC: Carolina Academic Press, 2012), 443-530, specifically discusses this issue of police officers working as interpreters in detail. Also, one of the most comprehensive researches on this issue was conducted by Susan Berk-Seligson in *Coerced Confessions: The Discourse of Bilingual Police Interrogations* (Berlin: Mouton de Gruyter, 2009), who also wrote "The Miranda Warnings and Linguistic Coercion: The Role of Footing in the Interrogation of a Limited-English-Speaking Murder Suspect," *Language in the Legal Process* (New York: Palgrave Macmillan, 2002), 127-147.

present the following arguments either negating the possible existence of “bias” in police interpreters or justifying the practice for other reasons.

Perhaps the most common argument denying “bias” is that the officer, who has been assigned to do the interpreting work, is only serving as an impartial “language conduit” interpreter.¹⁸⁸ It is often the case, however, that the only proof the police can offer for the asserted impartiality is the officer’s own sworn testimony that “he truly believes that he translated impartially.” Accordingly, if the asserted “impartiality” is based on the assumed “conduit” nature of the officer’s translation, then “impartiality” cannot be proven until “accuracy” is verified.

Another frequently used argument is that using police employees more effectively serves exigent and urgent police needs,¹⁸⁹ which is an “end-justifies-the-means” argument. It is certainly true that post-arrest “custodial interrogation” must be conducted within 48 hours. However, there are also other common-law jurisdictions in the world, such as the U.K. and Australia that practice a “strict rule” of using “a publicly funded independent interpreter” for “objectivity and impartiality” purposes, “even if a police officer or legal representative of a suspect is

¹⁸⁸ This is the major argument used in almost all rulings that have affirmed the use of police staff interpreters. The original legal authority comes from *Da Silva*, which ruled “[t]he fact that Stewart was an employee of the government did not prevent him from acting as Da Silva’s agent for the purpose of translating and communicating Da Silva’s statements to Tripicchio. See Restatement (Second) of Agency § 392 (1958) (dual agency permitted)” (emphasis added), *Da Silva*, id., 832. Also, *Nazemian* says, “Other circuits have not held that *the fact that the interpreter is provided by the government, in and of itself, is dispositive of the agency question*. See *United States v. Da Silva*, 725 F.2d at 832 (interpreter was a customs official supplied by the DEA); *United States v. Koskerides*, 877 F.2d at 1135 (interpreter was employed by the American embassy and procured by the government); *United States v. Alvarez*, 755 F.2d at 859 (translation was by one undercover agent for the benefit of another). We likewise *do not find it dispositive* in this case” (emphasis added), *Nazemian*, 527-528.

¹⁸⁹ *Commonwealth v. Carrillo*, id., 133. See also fn. 167, *supra*.

bilingual and able to interpret.”¹⁹⁰ As for the maximally allowed detention time, the pre-charge maximum in the U.K. for non-terrorist suspects is 4 days,¹⁹¹ while many jurisdictions in Australia use a “reasonable time” rule, the maximum of which is still within 24 hours in most cases.¹⁹²

Another “end-justifies-the-means” argument is that police employees will be more readily available as an in-court witness, which is certainly true. However, even if they can take the witness stand, their “translation accuracy” and “impartiality” can be proven only indirectly by their own self-belief and self-assertion.

Still another “end-justifies-the-means” argument is that using “in-house” bilingual officers is more cost-efficient. It may indeed be true, as guarantee of accuracy (quality) usually comes with a price. It may also be true that in almost every venue in our life, not just about the issues concerning indigent LEP suspects, the not-very-well-kept-secret is the principle that “beggars can’t be choosers.” However, it is also a fact that such “cost debate” can become futilely inconclusive and often meaningless, as it is usually impossible to mathematically compare the benefit of “short-term” cost saving against the “long-term” social benefit of improved human rights protection in criminal justice proceedings. This concerns not only the U.S. but also the rest of the whole world, including Japan, the home country of the author of this thesis.

¹⁹⁰ Mulayim, Lai, and Norma, *Police Investigative Interviews and Interpreting*, xxix.

¹⁹¹ “Extended Pre-Charge Detention,” Liberty: Protecting Civil Liberties Promoting Human Rights, <https://www.liberty-human-rights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention> (Retrieved on November 22, 2015).

¹⁹² “Police Powers to Arrest and Detain,” Legal Aid, Western Australia, <http://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/securityOfficers/Pages/Policepowerstoarrestanddetain.aspx> (Retrieved on November 22, 2015).

Still even another similar cost argument is that whether the interpreter is a police employee or a publicly-funded interpreter, the ultimate budget source is the tax-payers' money, so fundamentally there is no real difference. It is definitely true that as long as the funds for providing a language interpreter come from the government, tax-payers ultimately bear the cost. However, the same would become true of "court interpreters," who, as "officers of the court," are paid by each court which is supported by the tax-payers' money. Nevertheless, just like judges, court interpreters are usually regarded as "impartial," abiding by the Court Interpreters Act.¹⁹³

2. Competence Issue

What then would be some of the major arguments against using police officers as interpreters? The first and foremost is the competence issue, namely unclear qualifications and skill. There is a huge difference between being "(putatively) bilingual" and being capable of providing professionally acceptable interpreting service,¹⁹⁴ the former often resulting in an occurrence of numerous translation errors, both noticed or unnoticed.

An expected response to this, however, would be that if the problem is "inadequately low skill," that can be overcome by more in-house training.¹⁹⁵ Also

¹⁹³ 28 U.S. Code § 1827-Interpreters in courts of the United States

¹⁹⁴ Linda Friedman Ramirez, ed., *Cultural Issues in Criminal Defense*, 3rd ed. (New York: Juris Publishing, 2010), 149.

¹⁹⁵ Roseann Duenas Gonzalez writes in *Fundamentals of Court Interpretation* that "Phoenix Police Department, which serves one of the largest Latino populations in the county, requires only a 15-minute interview" of a short conversation "to gain certified English/Spanish bilingual status." Roseann Dueñas González, Victoria Félice Vásquez, and Holly Mikkelsen, *Fundamentals of Court Interpretation: Theory, Policy, and Practice*, 2nd ed. (Durham, NC: Carolina

some argue that using outside interpreters hired by private companies does not automatically guarantee quality-assured service with adequate-level skill, since many private companies often “hire bilinguals who lack training, experience, knowledge and skills” either to meet the market demand or to cut costs,¹⁹⁶ which also may very well be true, not only in the U.S. but also elsewhere in the world. As long as there is no legal provision about required qualifications, the competence of interpreters in police interviews can never be guaranteed, in-house or outside.

3. Bias and Coercion: Footing Shifts

Another major, and perhaps a more critically important argument against using in-house police interpreters is “bias,” and here, many interpreting specialists have pointed out “footing shifts,” that the interpreter’s “footing” changes between that of “an interrogating officer” and that of “an interpreter.” Many research observations have revealed that bilingual police officers are inclined to become “partial” by subtle changes of “footing” while interpreting, between that of a “mere, impartial interpreter” and that of a “member of the interrogation team,” imposing coercion.¹⁹⁷

Regarding such “bias” claims, courts have consistently required clear and undeniable evidence showing the existence of such “bias,” ruling that “[p]olice

Academic Press, 2012), 473.

¹⁹⁶ Ramirez, ed., *Cultural Issues*, 150.

¹⁹⁷ One of the most comprehensive researches was conducted by Susan Berk-Seligson in *Coerced Confessions: The Discourse of Bilingual Police Interrogations* (Berlin: Mouton de Gruyter, 2009), which she concludes by saying that using untrained police officers as interpreters is “playing with fire,” 217. Berk-Seligson also writes in “The Miranda Warnings and Linguistic Coercion: The Role of Footing in the Interrogation of a Limited-English-Speaking Murder Suspect,” *Language in the Legal Process*: 127-147, (New York: Palgrave Macmillan, 2002) that “a police detective who is in the footing of interpreter might easily turn out to be a wolf in sheep’s clothing,” 142.

interpreters should not be presumed biased absent a showing from the record,”¹⁹⁸ or that “[i]n the absence of some evidence from which prejudice can be inferred”¹⁹⁹ police officers acting as interpreters cannot be found biased .

4. Double “Impartiality” Standard

Another strong criticism against the use of in-house police interpreters is the “double standard,” which is an “impartiality” standard favoring the police. While “impartiality” and “conflict of interest” are clearly written in every “code of ethics” for “court interpreters” as “explicit warnings,” and while court interpreters are required to “disclose immediately if the interviewee or immediate family is known or related,”²⁰⁰ the same standard is not required for police officers acting as police interpreters.

A possible counter-response, of course, would be that the administrative goal of “courts” and “police” are not exactly identical, and that police interviews are under exigent time pressure, while more preparation time is allowed for courts. They might also argue that just because the standard is less strict, it does not necessarily follow that therefore police officers acting as police interpreters are actually “biased,” without evidence showing otherwise.

E. Court Rulings on Police Interpreter Bias: Extremely Few (and Mostly Old)

This section will present major court rulings in the U.S. which specifically

¹⁹⁸ *Baltazar-Monterrosa v. State*, 137 P.3d 1137 (Nev. 2006), 1141.

¹⁹⁹ *Commonwealth v. Carrillo*, *id.*, 130.

²⁰⁰ Berk-Seligson, *Coerced Confession*, 19 (quoting from: Institute of Linguistics Educational Trust 1996: 23).

addressed the in-house police interpreters' bias, which, unfortunately, are rather few and often old. Perhaps the two landmark rulings that straightforwardly addressed this issue are *Gonzales v. State*²⁰¹ (Supreme Court of Delaware 1977) and a more recent case in Illinois, *State v. Carmona-Olvara*²⁰² (Ill. App. 2005).

In *Gonzales v. State*,²⁰³ the officer who had arrested the defendant also served as an interpreter at the trial, which led to the court to rule that “[w]e hold that there is an inherent possibility of bias, and a violation of due process rights, whenever an arresting police officer is called upon to serve as the defendant’s interpreter at trial.”²⁰⁴ *Gonzales* also cited the following related precedents.

In *Mislik v. State*²⁰⁵ (Ind. 1896), cited in *Gonzales*, the arresting officer acted as an interpreter, but did not properly explain a guilty plea or a right to an attorney; instead he told the defendant to just say he was there when the theft occurred. The *Mislik* court ruled that “[i]t may not be out of place to refer again to the impropriety of permitting an officer to act as interpreter for an accused person in whose arrest or detention the officer has actively participated.”²⁰⁶

In *Bielich v. State*²⁰⁷ (Ind. 1920), also cited in *Gonzales*, the police officer did

²⁰¹ *Gonzales v. State*, 372 A.2d 191 (Supreme Court of Delaware 1977), 192-193.

²⁰² *State v. Carmona-Olvara*, 363 Ill. App. 3d 162; 842 N.E.2d 313 (Ill. App. 2005), 167-168.

²⁰³ *Gonzales v. State*, 372 A.2d 191 (Supreme Court of Delaware 1977), 192-193.

²⁰⁴ *Gonzales v. State*, *id.*, 192.

²⁰⁵ *Mislik v. State*, 184 Ind. 72, 77, 110 N.E. 551 (Ind. 1896).

²⁰⁶ *Gonzales v. State*, *id.*, 192.

²⁰⁷ *Bielich v. State*, 189 Ind. 127, 135-136, 126 N.E. 220, 223 (Ind. 1920).

not explain a guilty plea or a right to counsel properly, and the court ruled that “[t]he person acting as interpreter in such a case should be entirely free from any suspicion of interest in either the conviction or acquittal of the party accused.”²⁰⁸

*McGuire v. State*²⁰⁹ (Ind. 1950), still another citation in *Gonzales*, cited *Mislik* and *Bielich*, saying that it was “natural to suppose that [arresting officer serving in court as interpreter] would be anxious to justify his former action.”²¹⁰

In a more recent case in Illinois, *State v. Carmona-Olvara*²¹¹ (Ill. App. 2005), the arresting police officer who questioned the suspect in Spanish mistranslated the suspect’s statement conversely. A statement that really meant “I don’t know anything” was translated as “I don’t know. I just did it.”²¹² The court ruled, “This case involves a real possibility of [‘]bias or partiality[’] affecting the interpreter’s translation of defendant’s words.”²¹³

“Impartiality” Proof May Have to Be Subsumed into “Accuracy” Proof

What we can observe from these very few precedents about “bias” is that perhaps the only way to prove “bias” is through the resulting “biased, inaccurate translation” examples.

²⁰⁸ *Gonzales v. State*, *id.*, 193.

²⁰⁹ *McGuire v. State*, 228 Ind. 696, 94 N.E.2d 589 (Ind. 1950).

²¹⁰ *Gonzales v. State*, *id.*, 193.

²¹¹ *State v. Carmona-Olvara*, 363 Ill. App. 3d 162; 842 N.E.2d 313 (Ill. App. 2005), 167-168.

²¹² *State v. Carmona-Olvara*, *id.*, 164.

²¹³ *State v. Carmona-Olvara*, *id.*, 167.

The use of “bilingual police officers” or “police-hired interpreters” is never ideal, especially in light of the fact that other common-law jurisdictions such as the U.K. and Australia are practicing the use of “publicly funded independent interpreter[s].”²¹⁴ In the U.S., however, this particular “debate” remains rather “circular” and “inconclusive,” as was shown in Chapter VI (this chapter), D, *supra*.

Courts’ consistent (and insistent) rulings and stance show leniently generous standard for accuracy. For examples, errors, no matter how numerous, do not constitute material harm if they are minor and peripheral, and if the officer can basically communicate in both languages, the conditions are met.

As for impartiality, courts have required tangible proof actually demonstrating “bias,” saying that just because the interpreter is a police officer, it does not automatically mean that he or she is biased, in the absence of clear proof showing actual “bias,” such as the arresting officer’s converse mistranslation of “I don’t know anything” into “I don’t know. I just did it.”²¹⁵

Considering all this, it might be adequate to contend that “partiality (bias)” verification may have to be subsumed into “accuracy” verification based on the premise that “bias” can cause “translation” in favor of the police, or that really tangible harm that can be caused by “bias” is “inaccurate translation” against the suspect’s favor.²¹⁶

²¹⁴ Mulayim, Lai, Norma, *Police Investigative Interviews and Interpreting*, xxix.

²¹⁵ *State v. Carmona-Olvara, id.*, 164.

²¹⁶ “This case involves a real possibility of [‘]bias or partiality[’] affecting the interpreter’s translation of defendant’s words.” *State v. Carmona-Olvara, id.*, 167.

Chapter VII

Make Truly “Conduit (Accurate and Impartial)” Interpreting Possible and Verifiable

The post-*Crawford* Confrontation Clause requires in-court verification of evidence reliability through cross-examination. In light of this, this chapter will discuss the best way to verify interpreters’ “conduit” translation.

A. The Best Way to Verify Interpreter’s “Conduit (Accurate and Impartial)” Translation

The most logical solution would be to simply subpoena the very interpreter to be cross-examined, which even now is sometimes done in many courts when a very specific translation by the police interpreter has become a key issue.

Actually, however, that precisely shows the limitation of this current approach, as it is based on the old premise that “normally, no verification is necessary,” for the reason that the said police interpreter is an “agent” or “conduit” with “*prima facie*” accurate translation. Still, an even more critical problem in resorting to “just summoning the police interpreter” is that the information obtainable from this interpreter’s “memory” is rather limited, as was explained in Chapter IV, B-2, *supra*. During an interview, the interpreter is completely occupied with the contemporaneous interpreting work, and there is no room for remembering the details of what the suspect

actually stated.²¹⁷ Interpreters' memory mechanism just does not work that way.²¹⁸

Even with a professionally qualified interpreter, the continuous "back-and-forth" interlanguage translation with required accuracy and speed occupies the whole cognitive faculty completely and maximally, for which reason, even if an interpreter is to be summoned for an in-court testimony, the interpreter cannot and should not be expected to "remember" all the statements in both languages verbatim as if they had been "memorized" or "recorded," let alone to testify to the actual "testimonial statements" to be admitted into evidence, which precisely is the job of an investigating police officer.²¹⁹

"Accuracy" of Translation: Difficult to Verify by Just Cross-Examining the Interpreter

If subpoenaed, an interpreter could at best testify only to: 1) interpreter's qualifications and experience; 2) that "he or she truthfully believes" that "he or she translated accurately"; 3) explanations on "some" specific translation issues, as to why and how a particular expression was translated in the way the interpreter chose to translate.

²¹⁷ In *Letterman*, the interpreter who had served in a police interview with super-excellent skills and qualifications was nonetheless unable to "recall any of the answers given by the defendant to the officer's questions" when she testified in court. *State v. Letterman*, 47 Ore. App. 1145; 616 P.2d 505 (Ore. App. 1980), 1147.

²¹⁸ As was mentioned in fn. 130, "The interpreter is not asked and should not be expected to memorialize and remember the content of every communication. That is the role of the official court reporter. It would be impractical and virtually impossible to impose such a duty on court interpreters. In fact, to expect and require interpreters to be able to recall every communication they interpret would place upon them an immense burden which could adversely affect their ability to quickly, accurately, and intelligibly communicate the statements they translate. In addition, it simply is infeasible to expect that a court interpreter could recall the content of the many conversations which an interpreter must communicate day-in and day-out." *People v. Torres*, 213 Cal. App. 3d 1248 (Cal. App. 1989), 1261.

²¹⁹ See fn. 218, *supra*.

Why would these be insufficient? First, “qualifications” and “experience” are only indirect and partial proof. They are, of course, of valuable importance, as this thesis has already emphasized, since truly “high quality” performance can only be attained through many years of training and experience. Unfortunately, however, this proposition does not work the other way. Just because a person has had many years of training, this does not automatically guarantee quality performance. Accuracy can only be verified through direct verification of the performance itself.

Second, the interpreter’s sworn testimony on his or her sincere belief in one’s own performance is also only an indirect, subjective proof, which still would not resolve the next, third question, a “specific” interpretation or translation issue.

“Specific issues” arise as a “discrepancy” between the police officer’s testimony and the defendant’s memory as a result of any one of the following causes: 1) the defendant said something different and the interpreter mistranslated it, still believing in the accuracy of the mistranslation; 2) the defendant said something different, and the interpreter agrees that “if that really had been what the defendant had said, yes, the translation would have been an error,” but the interpreter still believes that that was not what the defendant had said during the interview; 3) the interpreter insists that the translation was accurate although he now feels that the defendant may have said something different, and that the translation may have been inaccurate, but there is no way to ascertain which was true; 4) the defendant is “mis-remembering” what he had said, and the interpreter actually translated the defendant’s statement accurately; 5) the defendant, though knowing the translation was accurate, wants to change what he had told the police officer by simply lying; and 6) still many more possible patterns and combinations. When such issues arise, how can the trier of fact verify the truth?

B. Recording, Transcribing, and Translation-Authenticating: Only Way That Benefits All

The thesis will contend that the answer to the question in the previous section is the introduction of digital video recording of the entire interview, accompanied by a transcription of the translation authenticated by a certified interpreter, which ultimately will benefit all the parties by better meeting their needs.

1. Mandatory Digital Video-Recording of Entire Interview: Only Way That Saves All

The LEP suspect will be protected not only from potential verballing caused by inaccuracy but also from other potential coerced confessions. The interpreter can concentrate on the original mission of contemporaneous, faithful translation work, and also will be protected from any potential false accusation of mistranslation. As for the police and the prosecutor, they can better prevent crucial confession evidence from getting rejected due to unfortunate interpretation issues. They can also obtain a hard evidential record of the suspect's confession to guard against the suspect's future denial. More importantly, they can better concentrate on questioning by being relieved from taking copious notes during the interview²²⁰ and will be protected from potential false accusation of coercion.

As for courts, the trier of fact can base their judgment on much more direct and tangible evidence, and higher courts will not have to waste time on an otherwise unnecessary plain error hearsay review made by the defense counsel who has, either negligently or strategically, bypassed actual translation accuracy verification.

In addition to all the above, the quality of police interpreters can be expected to

²²⁰ See fn. 235, *infra*.

improve.²²¹ Just like court interpreters, the performance of police interview interpreters will be exposed to the public eye much more openly, requiring them to pass a higher muster, and this scrutinizing process will gradually “separate the goats from the sheep,” enabling the public a more direct check on potential “bias” as well.

2. Legislative/Judicial Failure #2: the U.S. Lagging Behind in Mandatory Recording

Other common-law jurisdictions have long since been practicing this as a regular or required procedure.²²² In the U.K., recording has been required since the enactment of the Police and Criminal Evidence Act 1984 (PACE), Code E. Ireland required practice by the 1997 promulgation in the Criminal Justice Act of 1984, §27. In Australia, recording has been required in all jurisdictions since about 1990, and in New Zealand, recording has been strongly recommended by the Ministry of Justice.

In Canada, too, recording has been strongly recommended by court rulings. *R. v. Richards* [1997] 87 B.C.A.C. 21 (1997) ruled that “making contemporaneous recordings of custodial interrogations is highly desirable,”²²³ and *R. v. Ducharme* [2004] MBCA 29, 182 C.C.C. (3d) 243; *R. v. Groat* [2006] BCCA 27 stated that “failure to record electronically a formal police interview, when there is no good reason not to, may raise suspicions and present obstacles to the Crown in its efforts to prove beyond a reasonable doubt that a statement given to a person in authority was voluntary.”²²⁴

²²¹ The actual process enabling this change will be discussed in Chapter VII, B-4 and D-2, *infra*.

²²² The following information is from: Thomas P. Sullivan, “Compendium: Electronic Recording of Custodial Interrogations” (July 11, 2014: Last Update), www.nacdl.org/WorkArea/DownloadAsset.aspx?id=33287, 260-265.

²²³ Sullivan, “Compendium,” 265.

In the U.S., however, as of August, 2015, recording is required by only 22 states.²²⁵ Among them, only 14 States and D.C. require recording by legislation, which are: Connecticut, Illinois, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oregon, Vermont, Wisconsin, and the District of Columbia. In 7 States, recording is stipulated by state Supreme Court rulings, which are: Alaska, Indiana, Iowa, Massachusetts, Minnesota, New Hampshire, and New Jersey. In addition to these states, about 1,000 individual jurisdictions practice recording by voluntary policies, and more than two-third populations in 4 additional states are protected by recording done either by policy or practice, which are: Arizona, Hawaii, Rhode Island, and Utah.

As for Federal agencies, only since 2014, recording has finally been put into practice but only in certain types of crime interrogations by federal agencies.²²⁶ The thesis will particularly point out that the three major immigrant states, namely California, Florida, and New York, are still not included in the above, and in Japan, the home country of the author of this thesis, is very sadly further behind all of these nations mentioned so far.²²⁷

²²⁴ Sullivan, "Compendium," 265.

²²⁵ Innocent Project, "False Confessions & Recording of Custodial Interrogations," <http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/false-confessions-recording-of-custodial-interrogations> (Posted on August 12, 2015).

²²⁶ "Recent Administrative Policy: Criminal Procedure—Custodial Interviews—Department of Justice Institutes Presumption That Agents Will Electronically Record Custodial Interviews," *Harvard Law Review* 128 (March, 2015): 1552.

²²⁷ In Japan, recent reports of numerous brutal power abuses by law-enforcement interrogators prompted the Justice Ministry to set up a new advisory panel in 2011, which was to specifically address these problems. However, introduction of mandatory recording has faced a strong opposition from the law enforcement, and currently only about 3 percent of all criminal cases, or only 17.2 percent of those which go to lay judge trials are being recorded. See "Police Expand

3. Technology is Readily Available in the 21st Century: Just like DNA

The phonograph, the first recording device in history, was invented by Thomas Edison in 1877,²²⁸ twelve years after the first “agency theory” ruling and only fifteen years before the first “dual agency theory” ruling in the U.S.²²⁹ Since then, the sound-recording technology has undergone revolutionary innovations and advancement, just like the DNA technology, and in this 21st century, highly advanced digital video recording technology and devices are readily available and accessible at a significantly affordable cost.

Just like the DNA technology advancement has changed the criminal justice administration dramatically, recording police interviews is the only way to make a breakthrough in this more-than-a-century-old “hearsay” debate on an “interpreter-assisted” extrajudicial testimony. The use of the recording technology has led to at least one acquittal of a Japanese woman after 10 years of imprisonment in Melbourne, Australia, which had resulted from a false conviction that was greatly due to inadequate interpreting. The acquittal was realized because recordings of all judicial proceedings, including the very first interrogation by a law-enforcement officer at the airport existed.²³⁰

Recording of Entire Interrogations,” *Japan Times*, April 23, 2015.

²²⁸ “History of the Cylinder Phonograph,” The Library of Congress, Congress.gov United States Legislative Information, <https://www.loc.gov/collections/edison-company-motion-pictures-and-sound-recordings/articles-and-essays/history-of-edison-sound-recordings/history-of-the-cylinder-phonograph/>.

²²⁹ *Camerlin v. Palmer Co.*, 92 Mass. (10 Allen) 539 (1865); *Commonwealth v. Vose*, 157 Mass 393 (32 NE 355) (1892).

²³⁰ In this so-called “Melbourne Case,” a long, laborious appeal to the International Covenant on Civil and Political Rights, an effort made by a team of more than 50 Japanese lawyers and about 10 forensic linguists and interpreting specialists finally brought about this acquittal. For

Not using such recording technology despite the increasing availability and accessibility of the technology and equipment is simply no longer justifiable. Already in 1990, Justice David Doherty of the Supreme Court in Canada ruled that an unrecorded confession was inadmissible as evidence, stating, “In this day and age, where the technology associated with audio recording (if not video recording) is readily available, very reliable, relatively inexpensive and usable even by the electronically illiterate such as myself, it is difficult to understand why a permanent video or audio record of the interview process was not made”²³¹

4. Recording, Transcribing, and Authenticating the Interpreter’s Translation

Digital audio-visual recording technology, transcribing equipment and software, qualified interpreting experts, etc. to “authenticate” accuracy are more readily available and accessible than were in the 19th century, when the original “agency” theory was invented.

Actually, many jurisdictions are already starting to practice the use of recording, transcription, authentication, or making alternative translations, in a number of cases involving LEP suspects and or victims. Not making full use of the already available means and resources, therefore, seems simply no longer acceptable. Also, this is the only but also perhaps the best way to “scrutinize” police interpreters, to gradually and naturally weed out “incompetent” and or “biased” interpreters, by exposing their

an English article summarizing this incident, see Andrew Rule, “How a Holiday Turned into 10 Years Jail” (August 17, 2002) <http://www.theage.com.au/articles/2002/08/16/1029114015888.html> (Retrieved on November 26, 2015).

²³¹ Kirk Makin, “Unrecorded Confessions at Risk of Being Thrown Out, Judge Says,” *Globe and Mail* (May 17, 1990).

performance to the fact-trier's eyes and ears, a natural way to "separate the goats from the sheep."

C. Mandatory "Video-Recording" as Authenticated Evidence

This section will discuss some of the key issues in the actual practice of video-recording and authentication.

1. Mandatory Video-Recording: Additional Notes

As for the choice between "audio-recording" and "video-recording," the thesis contends that "video" is strongly preferable to "audio." The following section will explain the reasons as well as "video" specific reminders.

First, for transcribers and translation authenticators, "video" helps to prevent speaker misidentification in a multi-participant interview. Also, being able to see the actual speakers helps to more correctly catch otherwise near-unintelligible or near-inaudible utterances.

Second, for the triers-of-fact, "video" is definitely more helpful to understand the actual exchange between or among the participants with much more ease. More importantly, facial expressions and other non-verbal expressions speak as much as the actual verbalized utterances, sometimes even more.

For interpreters, "video" may possibly impose more psychological pressure, but the real psychological pressure "threshold" is the actual introduction of the recording itself, so after that "audio or video" may no longer create much difference. One important note is that in the case of "outside (not in-house)" interpreters, especially for those who belong to a relatively small "rare language" community, special camera

arrangement may become necessary so their faces may not appear on the screen (for privacy and other possibly security-related reasons).²³²

As for suspects, though “video” is more potentially privacy-infringing than “audio,” the expected benefits will significantly outweigh this drawback. For example, “video” will much more strongly protect a suspect from potential physical abuse by law enforcement officers.

Interviewing officers must note that the camera-setting becomes more difficult with an interpreter-assisted interview. All participants should appear on the screen, not just the suspect only, except the interpreter, or ideally only the interpreter’s back should face the camera.²³³

Another note for interviewing officers is that the participants’ seating positions greatly affect the interview; especially, the seating position of the interpreter can greatly influence the interviewing officer’s control over the entire interview. The most natural seating position for the interpreter as a communication mediator would be between the interviewing officer and the suspect, but this might also make the camera positioning difficult. Placing the interpreter next to the suspect and away from the interviewing officer may potentially increase the number of foreign-language-only exchanges between the suspect and the interpreter, if the interpreter does not abide by the rules strictly, though for the suspect this positioning will undoubtedly increase a sense of

²³² An example of such seating arrangement is shown in Chapter XII, B-3, *infra*, though this seating arrangement also created another difficult problem, which is also discussed in Chapter XII, B-3, *infra*.

²³³ According to Innocent Project, “False Confessions & Recording of Custodial Interrogations,” *id.* (see fn. 225, *supra*), when the camera is fixed on the suspect, jurors are likely to disregard the interviewing officer and more likely to think that the confession was given voluntarily even when that was not the case.

security.²³⁴

One more note for interviewing officers is that at least one officer should be taking good notes even when the entire interview is being video-recorded because: 1) unexpected recording failures can always happen;²³⁵ and similarly, 2) the sound quality often turns out far from satisfactory; even an otherwise “no problem” recording may end up containing too many “inaudible” parts due to seating and or microphone positions or noises.

2. Video-Recording Will Become Evidence

The authenticated digital recording, if admitted, will become evidence under FRE 901(a). To maintain the recording’s content validity and a clear chain of custody, the entire interview must be recorded completely without any gaps, with clearly voice-recorded starting time and ending time, etc.

The trial judge will decide, by FRE 104(a), whether: a) to admit the video-recording as sufficiently authenticated evidence to be played for the jury or not; b) to play an audio version of the video instead of the video; c) to show only some parts of the video; or d) to show the transcript only, etc.

D. Mandatory Production of Authenticated Translation Transcript for FRE 801(d)(2)(A)

Since the initial burden of proof is on the prosecutor, they will be required to

²³⁴ Other seating position cautions are presented in PoliceLink, “The Use of Interpreter During an Interview,” May 31, 2007, <http://policelink.monster.com/training/articles/1963-the-use-of-an-interpreter-during-an-interview> (Retrieved on November 25, 2015). Also, Chapter XII, B-3, *infra*, discusses the interpreting issue related to the interpreter’s seating position.

²³⁵ An actual recording accident is what happened with the Toronto Police interview, which became this thesis’ forensic linguistic analysis that will be discussed in Part Two.

produce the transcript of the police interview with an authenticated translation.

1. Mandatory Production of Authenticated Interview Transcript by the Prosecutor

The prosecutor must prove that the recorded live English-translation by the interpreter of the suspect's original statement and the suspect's original foreign-language statements are sufficiently "identical" for the application of FRE 801(d)(2)(A).

The next question, therefore, is: who should transcribe, verify the translation accuracy, authenticate the completed transcript, and testify as an expert witness? The thesis will contend that this must be undertaken by a "certified or otherwise qualified court interpreter," who is also qualified to testify as an "expert witness."²³⁶ This is a level of qualifications which no state has ever implemented for out-of-court interpreters, such as police interpreters, or out-of-court transcript translators, as the current case law interpretation of FRE 604 is that it applies only for "in court" interpreters who, under oath, do the interpreting work for witnesses during cross-examinations.²³⁷

The thesis advocates that this must change, as verification of video-recorded police interview interpreting, preparation of a "check translation," and testifying to the accuracy level of the police interpreter's performance will require truly professional

²³⁶ FRE categorizes an "interpreter" as an "expert witness." FRE 604 stipulates that "an interpreter must be *qualified* and must give an oath or affirmation to make a true translation" (emphasis added). Also, FRE 702 defines an "expert" as a person who is "qualified as an expert by knowledge, skill, experience, training, or education" and "may testify in the form of an opinion or otherwise" with "the expert's scientific, technical, or other specialized knowledge," "sufficient facts or data," "reliable principles and methods," which "the expert has reliably applied to the facts of the case to help the trier of fact to understand the evidence or to determine a fact in issue."

²³⁷ A most recent ruling in the District of South Dakota, Southern Division also articulated, quoting numerous case laws, that although the defendant quotes FRE 604 in his motion to dismiss the prosecutor's transcript for the reasons that the translator does not have proper qualifications, FRE 604 "applies only to witness interpreters," who "translate questions posed to and answers provided by a witness during examination by counsel or the court." *United States v. Duarte-Lopez*, No. 4:15-CR-40106-KES (Dist. of S. Dakota 2015), 6.

expertise, as the witness must be able to explain about technical linguistic issues concerning the translation in question and answer the opponent's questions that challenge the witness's expertise.

While the use of a "certified court interpreter" may seem like an unnecessarily big burden, it will save time and cost in the long run. Recent research indicates that when the prosecutor uses a non-qualified "bilingual" person, transcription "typically contains an average of 100 errors per page."²³⁸

Also, if the prosecutor's transcript is properly authenticated by an adequately qualified, impartial court interpreter, the chances will be higher that the defendant will stipulate to the prosecutor's transcript as properly authenticated evidence that the jury can use thereafter, which, in turn, will eliminate unnecessary extra work and confusion as well as time and money being spent.²³⁹

In addition, unlike getting an interpreter for an exigent post-arrest custodial interview, procurement of such sufficiently qualified interpreters should not present impossible time pressure or difficulty to the prosecutor.

Last, but not least, this mandatory stipulation will indirectly pressure or motivate the police to use certified court interpreters for their interviews from the very beginning or even start training their employees for the certification examination, as that would greatly simplify the whole procedure since the same certified interpreter can do the transcribing, accuracy-verification, authentication, and the expert testimony.²⁴⁰

²³⁸ Ramirez, ed., *Cultural Issues*, 206.

²³⁹ Ramirez, ed., *Cultural Issues*, 206.

²⁴⁰ According to Clifford S. Fishman, "Recordings, Transcripts and Translations as Evidence," 81 *Washington Law Review* (2006), "[c]ourts are divided as to whether someone who was

“Certified court interpreters” are those who have passed relevant federal or state interpreter certification examinations, major examples of which are: 1) The Federal Court Interpreter Examination, 2) The National Judiciary Interpreters and Translators Certification Examination, and 3) The Consortium for State Courts Interpreter Examination.²⁴¹

2. What Needs to Be Transcribed and Translated

The authenticated transcription and translation are prepared for the triers of fact. Therefore, the completed transcript must present: 1) the interviewing police officer(s)’s utterances (in English); 2) the interpreter’s oral translation of the police officer(s)’s utterances into the suspect’s language (from English into the suspect’s language); 3) the suspect’s utterances (in the suspect’s language); and 4) the interpreter’s oral translation of the suspect’s language into English (from the suspect’s language into English).

After transcribing all of the above, the authenticator (the expert witness) must also prepare and add to the said transcript: 5) his or her own translation of the (2) above, i.e. the authenticator’s “check translation” of the interpreter’s foreign-language translation of the officer’s statements back into English; and similarly, 6) the

a participant in a recorded conversation may later transcribe or translate the conversation,” but that Fishman thinks that since “a translation is opinion evidence of the transcriber/translator, there is no inherent reason to reject a translation prepared by a participant in the conversation,” 505. The author of this thesis is of the same opinion, if the transcriber is a certified court interpreter. The same, “certified court interpreter” who did the interpreting work in the police interview should be allowed to transcribe the interview recording, verify the translation accuracy, authenticate the transcription, to which he or she will testify in court. The author, however, will note that this interpreter will also have to provide “written check translations” of all the live interpretations he or she rendered during the interview. Please see the discussion in Chapter VII (this chapter), D-2, *infra*.

²⁴¹ Ramirez, *Cultural Issues*, 198.

authenticator's own "check translation" of the suspect's foreign-language statements, i.e. (3) above, into English. The transcript must present the above "(1) and (5)" and "(4) and (6)" in a way that would help the triers of fact to compare each pair clearly and easily.

Though these extra "check translations" may sound troublesome, it must be noted that even these two "check translations" are still all in English, only for English-speaking triers of fact and the English-speaking defense counsel. From the LEP suspect's point-of-view, unless (1) and (4) of the above are also "check-translated" into his or her language, the suspect is unable to truly verify whether the police interpreter was really accurate. The thesis' recommended procedure excluded these final two "check translations" for the reason that the transcript is prepared to help the English-speaking triers of fact and the defense counsel, who especially is responsible for ensuring that the suspect's Fifth Amendment due process rights were not violated during the police interview.

Even when a certified court interpreter served in the police interview and will also do the transcription and authentication, all of the (1) to (6) must be done in the same way. The extra "check translations" may seem redundant, but they are not. Contemporaneous live oral translation (interpretation) and a later "hindsight" written translation with more luxury of time and reference resources will inevitably differ,²⁴²

²⁴² "Unlike Arroyo, who was interpreting defendant's answers in person with *little time to consider the accuracy* of his interpretations, the translator who prepared the transcript had the *luxury of listening to the recording, multiple times if necessary*, to ensure that he or she accurately translated defendant's answers." *State v. Ruben Betance-Lopez*, Ill. App. 2d; 38 N.E.3d 36 (Ill. 2015), 44. Even with certified interpreter, the difference in the working conditions between a live interview and a written translation always exists. The training that certified interpreters receive is specifically for acquiring strategies for rendering contemporaneous oral translation with "legally and linguistically acceptable accuracy," which is a fusion of "art" and "science," and which the interpreter will have to explain to the trier of fact as an expert witness.

though this does not immediately mean that the previously given oral translation was less accurate. It will be this certified interpreter's job as an expert witness to explain to the judge and the jury what kind of linguistic differences (lexical, semantic, grammatical, and or pragmatic), if any, exist (or do not exist) between the live version and the later, written translation, on which the triers of fact can base their judgement.

3. Authenticated Transcription Will Become Independent "Opinion" Evidence

After the completion of the authenticated evidence, both the "video recording" and the "authenticated transcript" will become independent evidence; the "video recording" will become "tangible evidence," and the "transcript" will become "opinion evidence."

Regarding the classic question as to whether only the video recording becomes the evidence and the authenticated transcript is only an "aid," the *Onori*²⁴³ ruling which determined that both the recording and the transcript can become evidence should apply. Especially in the case of a recording that contains foreign language exchanges, this is critically important because half of the actual recording will be unintelligible to the triers of fact, who will not be able to make any meaningful judgement without the authenticated transcript.

4. Authentication of the Transcript

The same certified interpreter who transcribed the recording and prepared the "check translations" will also authenticate the completed transcript, which includes the

²⁴³ *United States v. Onori*, 535 F.2d 938, 948 (5th Cir. 1976), 947.

following steps: 1) authentication of the entire transcript by verifying that there are no transcription errors; and 2) authentication of the interview interpreter's live interpretation by verifying its accuracy or lack of it, by comparing the interview interpreter's interpretation with the "check translations" prepared by the authenticator.

5. Application of FRE 801(d)(2)(A)

What will this authenticated evidence prove to the triers of fact? First and foremost, the authenticated recording and the authenticated transcript together will become the most crucial evidence to determine whether or not FRE 801(d)(2)(A) will satisfactorily apply for the admission into evidence of the defendant's out-of-court testimonial statements, with the proven "identicalness (conduit)" of the police interpreter's English translation with the suspect's original statements.

The evidence will also enable the triers of fact to verify if the defendant's Fifth Amendment due process rights were sufficiently protected, not only a "right against verballing," but also a right to testify in one's own language with complete understanding of the questions being asked.

E. Expert Testimony by the Authenticator: Certified Interpreter as an Expert Witness

FRE 702 defines an "expert witness" as a person who: 1) is qualified as an expert by knowledge, skill, experience, training, or education; 2) testifies in the form of an opinion or with scientific, technical, or other specialized knowledge; 3) testifies based on sufficient facts or data; and 4) applied reliable principles and methods.

How would this rule apply to this "certified interpreter," who has authenticated the evidence (the recording and the transcript) and will now testify as an "expert

witness”? First, as for “scientific, technical, or other specialized knowledge,” the interpreter, as an expert, has a “knowledge” of the two languages in question. This knowledge entails: 1) the interpreter’s actual proficiency in the two languages, i.e. the expert can use the two languages proficiently;²⁴⁴ and 2) technical knowledge about the two languages, i.e. that the expert can discuss and explain the linguistic (e.g. lexical, semantic, structural, pragmatic, as well as culture-bound) features of the two languages and differences between them.

The interpreter, as an expert witness, also has a knowledge about interpreting: 1) actual “interpreting proficiency,” i.e. inter-linguistic interpreting skill (contemporaneous oral translation skill); 2) technical knowledge about interpreting task and about its proper protocols (do’s and don’ts); and 3) technical knowledge about the different linguistic features between “contemporaneous oral translation” and “written translation,” and practical issues involved in each task—so the jury can make a properly informed judgement about the reliability of the “live” police interview interpretation without prejudice.²⁴⁵

What would be “facts or data” in the case of this interpreter who has authenticated the evidence? The “data” would be the actual digital video-recording of the police interview.²⁴⁶ If a duplicate was given to the interpreter, the interpreter as a

²⁴⁴ Though courts often use the term “fluent” or “fluently,” from a linguistic standpoint, this usage is not adequate. Language proficiency entails all of the four skills: speaking, listening, reading, and writing. “Fluency” in conventional use primarily refers to the “speaking” skill, which is the most readily observable skill of the four, though in language teaching “fluency” is also used for the other three skills as well. In addition, “fluency” does not encompass “accuracy,” technically. Therefore, language professionals use the term “proficiency” to denote both “fluency” and “accuracy” in all of the four skills mentioned above.

²⁴⁵ See the discussion in Chapter VII, D-2 and fn. 242, *supra*.

²⁴⁶ Clifford S Fishman, “Recordings, Translations, and Transcripts: A Lawyer’s

witness must be able to testify that the duplicate was also provided with a proper chain of custody, with no missing sections.

Next, “reliable principles and methods” would require that the interpreter, as an expert witness, explain what kind of methods based on what kind of principles were used for the transcription and translation, for example: 1) sound player as well as transcription equipment and voice enhancement application software, etc.; 2) concrete procedures and steps, such as whether the whole transcription was completed first before translation, or transcription and translation were done simultaneously utterance by utterance, or how nearly inaudible parts were deciphered, etc.; and 3) the reference resources resorted to, and whether these are commonly used by other experts in the same field, e.g. corpus database, dictionaries, websites, as well as friends, co-workers, and acquaintances who speak the language,²⁴⁷ etc.; and 4) translation principles, i.e. technical inter-lingual interpretation and translation strategies employed for this task.

Accuracy Challenge: Burden Shifts to the Defendant

If the above procedures are properly followed, the chances will be very high that the defendant will stipulate to the “translation- accuracy-verified and authenticated” transcript of the police interview. If, however, the proffered “accuracy verification” seems to present any “reliability” issues, then according to the widely accepted standard procedure adjudicated in *United States v. Onori*²⁴⁸ is that at this point, the burden of

Perspective,” Materials for Attendees at the May 2013 NAJIT Conference (May, 2013), 5.

²⁴⁷ FRE 703. Experts can base their opinions on: 1) personally observed facts or data, as well as 2) other facts or data that may otherwise be inadmissible evidence (e.g. hearsay).

²⁴⁸ *United States v. Onori*, 535 F.2d 938, 948 (5th Cir. 1976).

proof shifts to the defendant. According to *Onori*, when the parties do not agree on the accuracy of the transcript presented by one party, the other party can present a contesting transcript and let the jury decide.²⁴⁹

Of course, various practical difficulties arise here. For one, since the defense counsel does not understand the defendant's native language or can communicate with the defendant directly, it is impossible for the defense counsel: a) to determine to what extent the proffered transcript and the translation are really accurate; and if there is a problem, b) to ascertain exactly which part, which statement, which utterance, or which word is inaccurate. Also, there is always a cost problem involved, especially in the case of an indigent LEP suspect. For these reasons, it seems that in most cases this is where the defense counsel partially gives up, faced with an insurmountable language barrier. This is why the law should strictly stipulate that the prosecutor use a properly qualified "certified court interpreter" to undertake the whole transcription and accuracy-verification ("check translations") work.

Unless the defense counsel submits an alternative, supposedly a more accurate translation and its transcript in a timely fashion, any later translation challenges will most likely be rejected in the current trial or on appeal.²⁵⁰ If a translation accuracy

²⁴⁹ *United States v. Onori, id.*, 947-948.

²⁵⁰ This common pattern is exemplified in *State v. Ruben Betance-Lopez*, which ruled, "[i]n reaching this holding, we emphasize that defendant had the opportunity to offer an alternative translation of his answers, to cross-examine Arroyo regarding the accuracy of the transcript, or to call his own interpreter to testify to the proper interpretation of his answers. See *Carmona-Olvara*, 363 Ill. App. 3d at 167-68 (holding that a defendant has the right to offer a competing translation of his statement to a police officer). However, defense counsel did none of these things. Although defense counsel initially objected to the transcript on the basis that [']we don't know who transcribed th[e] audio statements['] and [']we don't know whether [the] Spanish portion[s] [were] translated correctly and accurately,['] counsel later abandoned this objection." *State v. Ruben Betance-Lopez*, Ill. App. 2d; 38 N.E.3d 36 (Ill. 2015), 44.

issue should ever arise, therefore, the defense counsel must find a qualified interpreter (e.g. a certified court interpreter) immediately and request for a production of an alternative, more accurate version, though again the cost may become a problem.

As a preventive measure to avoid such possible costs, at a very early, pre-trial stage, the defense counsel should obtain a court order to make absolutely certain that the prosecutor will use a properly qualified “certified court interpreter” to undertake the whole task.²⁵¹

²⁵¹ Ramirez, ed., *Cultural Issues*, 157.

Part Two: Forensic Linguistic Analysis

Chapter VIII

Forensic Linguistic Research Objectives

Custodial interrogations by law-enforcement officers are inherently shrouded from the public eye. Upon arrest, the suspect is immediately separated from the outside world in a police station and asked questions for hours in confinement. The exchange that takes place behind the closed doors is not, in principle, open to the public, unlike a court trial. Unless the entire exchange is being video-recorded for any necessary future scrutiny, there is no way of perfectly proving what was or was not said, or what happened or did not happen behind those closed doors.

For this reason, as has already been mentioned in Part One of this thesis,²⁵² many common-law counties such as the U.K., Ireland, Australia, New Zealand, and Canada, have already introduced mandatory use of digital recording, while the U.S. is lagging behind with only 22 states having adopted this system. As has also been contended in Part One,²⁵³ the use of this technology is not only critical but also simply indispensable if the nation's criminal justice is to strictly observe its fundamental duty of adhering to "due process," by ensuring the LEP suspect's Fifth Amendment right to an "interpreter's translation of verifiable accuracy."

Accordingly, Part Two of this thesis will demonstrate the crucial importance of

²⁵² See Part One, Chapter VII, B-2, *supra*.

²⁵³ See Part One, Chapter VII, B-1, *supra*.

the use of digital recording in an interpreter-assisted police interview followed by verification and authentication of the translation accuracy in the form of an action research conducted on an authentic video-recording of a Toronto Police custodial interview with a Dari interpreter.

This forensic linguistic “action study” analysis has used a real video recording of a custodial police interview with a Dari interpreter that took place at the Toronto Police in 2008. The 77:39-minute Toronto Police interview was submitted as a court exhibit not because of any interpreting issue but because of a mechanical accident that stopped the recording thereafter. Thus, this would be an ideal example of a police interview interpreting that was found by all parties as acceptable in terms of “accuracy” and “impartiality,” i.e., as an ideal “conduit” model.

Based on the findings in the thesis’ legal analysis in Part One, the forensic linguistic analysis in Part Two will answer the following four main questions. First, to what extent the monolingual parties (the police and the suspect) in a police interview can assess the interpreting accuracy and impartiality by only an indirect means without the actual verification of the accuracy and impartiality? Second, what should be the testimony of an “expert witness” be like after having transcribed and authenticated this particular recording? Third, how could the trier of fact determine the “accuracy” and “impartiality” from the submitted evidence: 1) the digital recording, and 2) the authenticated transcript? Would just submitting the recording only make sufficient evidence, or would the authenticated transcript as additional evidence supply any significant and indispensable added verification that would help the fact-triers to make more informed judgement? The fourth and the final question is: would the thesis’ proposed implementation be not only effective but also feasible? If not, how could

they be modified to be made more feasible?

Chapter IX

Review of Relevant Studies

The forensic linguistic analysis of a recording of an interpreter-assisted police interview conducted in this thesis is a product of several related academic disciplines, major ones of which are: 1) law, 2) linguistics, 3) forensic linguistics, and 4) interpreting and translation studies. In order to articulate the significance of this research as well as to identify its position in the overall academic disciplinary context, this chapter will briefly explain how the above relevant fields are intertwined, and what kind of research has been conducted so far in each area that is directly relevant to the issue of an interpreter-assisted police interview.

A. Law: Improved Due Process in the Upstream Criminal Justice

Part One of this thesis has discussed a classic as well as re-growing legal issue in the U.S. concerning evidential validity of an interpreter-assisted testimonial statement of an LEP suspect in a custodial police interview. The thesis has criticized the long-established practice of using the “agency theory” in order to apply FRE 801(d)(2)(C) or (D) vicarious admission to skirt the hearsay issue and to circumvent the *Crawford*’s Confrontation Clause issue.

The thesis demonstrated that the lack of “agency relationship” between the suspect and the interpreter invalidated the application of FRE 801(d)(2)(C) or (D), and more importantly that the imposition of such agency relationship on the suspect was nothing but a violation of the suspect’s Fifth Amendment due process right against

potential “verballing.” The thesis then proposed a clear re-separation of the “agency theory” from the “conduit theory” and advocated the “authenticated conduit theory” with the introduction of mandatory digital video recording and accuracy verification by a certified court interpreter who will also serve as an expert witness based on FRE 702.²⁵⁴ The thesis argued that, by passing this advocated, much higher muster, the authenticated “conduit” translation will enable the application of FRE 801(d)(2)(A), instead of FRE 801(d)(2)(C) or (D) vicarious admission.

B. Linguistics

Linguistics as a modern, scientific study of language was most probably launched by Ferdinand de Saussure,²⁵⁵ whose work greatly influenced the development of this new academic discipline in Europe and the United States in the 20th century. Linguistics has now become a firmly established academic discipline, encompassing numerous fields and subfields, from more traditional areas such as phonetics, phonology, morphology, syntax, semantics, pragmatics, speech acts, etc., to more applied areas such as discourse analysis, sociolinguistics, psycholinguistics, language acquisition, etc. More recent development includes such new sub-fields as forensic linguistics or interpreting and translation studies.

Three main linguistic theoretical frameworks that will serve as a basis for this

²⁵⁴ See Chapter VII, D and E, *supra*.

²⁵⁵ His pioneering contributions to the birth of this new discipline are actually in the form of compiled lecture notes titled, *Course in General Linguistics* (or *Cours de linguistique générale* in the original French), published in 1916, which were the notes on lectures he had given at the University of Geneva between 1906 and 1911. It was published in 1916, after Saussure’s death, and is generally regarded as the starting point of modern, structural linguistics, an approach to linguistics that flourished in Europe and the United States in the first half of the 20th century. Ferdinand de Saussure, *Cours de linguistique générale* (Lausanne-Paris: Payot, 1916).

thesis' analysis of the police interview recording are: 1) pragmatics, i.e., “pragmatic” interpretation of the source language and reformulation of the same, “pragmatic” meaning in the target language; 2) a sociolinguistic discourse analytical tool created by Erving Goffman,²⁵⁶ a Canadian-born American sociologist, who contended that a discourse participant normally takes on one of the following three roles: “animator,” “principal,” and “author”;²⁵⁷ and 3) conversation analysis, another sociolinguistic sub-field which analyzes patterns of conversations in various social and linguistic contexts. The following sections in this chapter will explain each one of these three in more detail.

1. Pragmatics

The first theoretical framework, pragmatics, is a field in linguistics that looks at the “meaning” of an utterance “in context,” as opposed to as an “isolated” lexical, syntactic, or semantic unit, by focusing on the “functions” or “functional meaning” of an utterance.

This method of linguistic analysis was originally developed by such linguists as John Langshaw Austin, a British linguistic philosopher who established the theory of “speech acts,” which focuses on what the speaker (interlocutor) intends to convey (illocutionary act) to produce the intended result (perlocutionary act),²⁵⁸ John R. Searle,

²⁵⁶ Erving Goffman, *Forms of Talk* (Philadelphia: University of Pennsylvania Press, 1981).

²⁵⁷ Goffman, *Forms of Talk*, 144.

²⁵⁸ John Langshaw Austin, *How to Do Things with Words: The William James Lectures Delivered at Harvard University in 1955* (Oxford: Oxford University Press, 1962).

an American philosopher, who further refined the speech act theory,²⁵⁹ or Paul Grice, a British linguistic philosopher, who established the theory of “co-operative principle” and “conversation implicature,” for a pragmatic analysis of a conversation.²⁶⁰

What is a “pragmatic meaning,” as opposed to a meaning of a word or words in an “isolated” lexical, syntactic, or semantic unit? As a very simple example, since we are talking so much about the meaning of “meaning,” let us take up an example of the word “mean.” What would be our immediate response, if we were asked, “What does the word ‘mean’ mean in English?” We would probably say that it is impossible to answer such a question as the word “mean” as one “isolated” lexical item can mean many different things depending on how it is used in a sentence.

Even in a sentence, depending on each syntactic structure, it could become an adjective, a verb, or a noun, each then having a whole list of possibly different meanings. Thus, put in a sentence like “I was mean,” syntactically the word “mean” is recognized as an adjective, as opposed to a verb or even a noun, as there is no determiner such as an article “a” or “the” at the beginning, or no plural marker “s” at the end of the word “mean,” like “I was (only) a means (to an end).”

Yet, as an adjective, the word “mean” in “I was mean” could still have semantically different meanings, e.g., 1) unkind, cruel, or bad-tempered, 2) ungenerous or stingy, or even 3) of low social status. We would need more contextual clues to determine the semantic meaning, e.g. just a few more words added, like “I was mean to

²⁵⁹ One of Searle’s many books on speech acts, for example, is: John R. Searle, *Expression and Meaning: Studies in the Theory of Speech Acts* (Cambridge: Cambridge University Press, 1985).

²⁶⁰ Herbert P. Grice, “Logic and Conversation,” *Syntax and Semantics 3: Speech Acts*, eds., L. Cole and J. L. Morgan (New York: Academic Press, 1975), 41-58.

you.” Then, most probably the word “mean” would semantically mean “unkind.”

This is as much as “meaning” can go in an “isolated” sentence, with its lexical, syntactic, and semantic meaning.

However, when this sentence, “I was mean to you,” is used in a real, live discourse with more surrounding context and the right tone of voice, the pragmatic meaning and its language function may become more like an “admission of fault,” “regret,” or even an “apology.” Similarly, the word “mean” in a sentence “I mean it” is syntactically used as a verb which semantically would most probably mean “to intend to express” in this one isolated sentence. However, suppose this sentence is now combined with the first sentence as something like, “I was mean to you. I really mean it.” Then the pragmatic meaning of the second sentence would become more like a “reassurance” of the immediately preceding “apology.”

Such “pragmatic” meaning plays one of the key roles when interpreters do contemporaneous, oral translation work from the source language to the target language to achieve the same, “equivalent meaning” as will be explained further in Chapter IX (this chapter), D-1, *infra*. For now, however, let us imagine that an English sentence, “I was mean to you. I really mean it,” was translated into a foreign language as, “I should have been more kind. I apologize sincerely.”

This translation is definitely not “literal,” but might possibly serve as one of the most appropriate translations with an accurate interpretation of the source language utterance’s “pragmatic,” intended meaning, given the right context. This becomes an even more crucial, interpreter’s on-the-spot translation judgment point, especially when the “literal” translation that the target language allows would only “literally” mean something like, “I acted in an ill-natured manner to you. It is my genuine intention to

make this statement.”

2. Goffman’s “Animator,” “Principal,” and “Author”

According to Goffman, a participant in a live discourse normally takes on one of the following three roles: “animator,” “principal,” and “author.”²⁶¹ These three categories have been used as an analytical tool in a number of recent interpreting research works which examined different roles played by interpreters or, more exactly, their “shifts in footing” during the interpreting work.²⁶²

The first one, “animator,” is the “sounding box” or the “talking machine...engaged in acoustic activity,”²⁶³ a role typically played by newscasters who must read the given news script verbatim or live radio sports broadcasters describing every single movement of the athletes on the field with accuracy and contemporaneity, as was already mentioned in Part One, Chapter IV, B-1, *supra*. The thesis will regard this “animator” role as the closest to the most rigid, traditional notion of a “language conduit” interpreter.

The second one, “principal” is one “whose position is established by the words that are spoken...whose beliefs have been told, someone who is committed to what the

²⁶¹ Goffman, *Forms of Talk*, 144.

²⁶² Some of the seminal works include Cecilia Wadensjö, *Interpreting as Interaction* (New York: Addison Wesley Longman, 1998); Claudia Angelelli, *Revisiting the Interpreter's Role: A Study of Conference, Court, and Medical Interpreters in Canada, Mexico, and the United States* (Philadelphia: John Benjamins, 2004); Sandra Beatriz Hale, *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness, and the Interpreter* (Philadelphia: John Benjamins Publishing, 2004); and Ikuko Nakane, *Interpreter-Mediated Police Interviews: A Discourse-Pragmatic Approach* (Chennai: India, 2014).

²⁶³ Goffman, *Forms of Talk*, 144.

words say.”²⁶⁴ Goffman uses an example in which a newscaster who, while reading a news script, spots an error, which, if it appeared in a quotation of a written work, could be simply taken care of by the use of “*sic*.” Since doing so is impossible in a live broadcast, a very commonly used tactic is a quick “interjected connective” such as “UP states.”²⁶⁵ Similarly, the newscaster who feels unsure about the pronunciation of the name just read aloud may quickly insert, “if I pronounced that correctly,”²⁶⁶ as a safeguard.

These are both instances in which the newscaster momentarily steps out of the original role of the “animator” into the “real self,” which Goffman calls “principal.” The thesis considers this “principal” role as the closest to an interpreter who makes his or her own statement in order to confirm, clarify, or correct, momentarily stepping out of the original “invisible” role of a “conduit.”

The last one, “author,” is the one who selects “the sentiments that are being expressed and the words in which they are encoded.”²⁶⁷ Traditionally, newscasters have been strictly prohibited from adding their own personal opinions to the scripted, plain news contents. While newscasters in more recent “news-like” programs often express or reveal their own opinions, they still must draw a clear distinction between the reported facts and their personal opinions if they do express them on air. This thesis deems this “author” role as the closest to what an interpreter does when he or she

²⁶⁴ Goffman, *Forms of Talk*, 144.

²⁶⁵ Goffman, *Forms of Talk*, 283.

²⁶⁶ Goffman, *Forms of Talk*, 284.

²⁶⁷ Goffman, *Forms of Talk*, 144.

intentionally adds, omits, reduces, or alters the content, which is basically a clear deviation from the “prescribed conduit” role but is also done sometimes for a clear purpose.

3. Conversation Analysis

Conversation analysis, another sub-field of sociolinguistics, was originally developed by an American sociologist Harvey Sacks, who, together with Emanuel Schegloff and Gail Jefferson, tried to delineate organizational patterns observed in various conversations, including such factors as “turn-taking.”²⁶⁸ This basic theoretical concept was used by Georgina Heydon, an Australian forensic linguist, in her seminal work of critical discourse analysis, *The Language of Police Interviewing: A Critical Analysis*,²⁶⁹ which was an analysis of monolingual police interviews. The approach used here has provided a hint to this thesis in developing a strategy for an analytical classification of the “verbal exchange cycle patterns” of an interview discourse conducted by three participants (the interviewing police officer, the suspect, and the interpreter) in an interpreter-assisted police interview.

C. Forensic Linguistics

Forensic linguistics, another recently developing subfield of linguistics, is

²⁶⁸ Harvey Sacks, Emanuel A. Schegloff, and Gail Jefferson, “A Simplest Systematics for the Organization of Turn-Taking for Conversation,” *Language* 50, no. 4 (1974): 696-735.

²⁶⁹ Heydon, Georgina, *The Language of Police Interviewing: A Critical Analysis* (New York: Palgrave-Macmillan, 2005).

actually only two decades old,²⁷⁰ although many of their jobs, which are now conducted based more on the state-of-the-art science and technology, have long been performed by various traditional “experts,” e.g., the handwriting experts who were called to serve in the 1932 kidnapping case of the then twenty-month-old baby of the renowned aviator Charles Lindbergh, all of whom “unanimously” agreed that all the letters had been written by the same person, who, originally of German nationality, had lived in the U.S. for some years.²⁷¹

This newly growing field of forensic linguistics encompasses almost all areas of applied linguistics where “law” and “language” intersect, from such traditional areas as an analysis of various legal discourses, both written and oral, for evidential purposes, including voice recognition work by expert phoneticians, to more recent areas such as detecting copyright or trademark infringements.²⁷² The critical discourse analysis work of monolingual police interviews by Georgina Heydon mentioned in Chapter IX (this chapter), B-3, *supra*,²⁷³ is also one example of such forensic linguistic work.

When interpreting and translation specialists conduct a similar analytical work on an interpreter-assisted police interview discourse, the approach and standpoint often become similar to those of a forensic linguist. This thesis has conducted an analysis of

²⁷⁰ Malcolm Coulthard and Alison Johnson, eds., *The Routledge Handbook of Forensic Linguistics* (New York: Routledge, 2010), 1.

²⁷¹ “The Lindbergh Kidnapping,” *Famous Cases and Criminals*, The Federal Bureau of Investigation, <https://www.fbi.gov/about-us/history/famous-cases/the-lindbergh-kidnapping>.

²⁷² Some of the most comprehensive works in this field include: Malcolm Coulthard and Alison Johnson, *An Introduction to Forensic Linguistics: Language in Evidence* (New York: Routledge, 2007); and Malcolm Coulthard and Alison Johnson, eds., *The Routledge Handbook of Forensic Linguistics* (New York: Routledge, 2010), mentioned in ft. 270.

²⁷³ Georgina Heydon, *The Language of Police Interviewing: A Critical Analysis* (New York: Palgrave-Macmillan, 2005).

the interpreter-assisted Toronto Police interview from each standpoint of those who become directly involved at each stage of criminal justice process, from upstream all the way downstream: 1) the interviewing police officer, the suspect, and the interpreter; 2) the prosecutor and the defense counsel; 3) a certified court interpreter who would be asked to transcribe, verify the translation, authenticate the transcript, and serve as an expert witness; and 4) the judge and the jury in a more downstream stage of fact-finding. In so doing, the thesis has employed typical “quantitative” and “qualitative” data analysis methods used in a forensic linguistic research.

D. Interpreting and Translation Studies

Finally, let us look at Interpreting and Translation Studies. Although this is also another newly evolving interdisciplinary sub-field of linguistics, as was mentioned in Part One, Chapter VI, A, *supra*, the analysis of “inter-lingual equivalence” in any work of “translation” dates all the way back most probably to the very moment when different civilizations using different languages began to intersect, first in oral communication²⁷⁴ and then in written forms.

1. “Word-for-Word” versus “Sense-for-Sense.”

In fact, the classic debate on “fidelity” versus “transparency” can be traced even back to 395 A.D., when St. Jerome, the then leading biblical translator, clearly stated “I

²⁷⁴ The etymological origin of the word “interpreting” is independent of “written translation” and is traced all the way back to Akkadian, an ancient language spoken in Assyria and Babylonia in around 1900 B.C. The Akkadian word “*targumānu*,” meaning an “interpreter,” became the origin of the English word “dragoman.” Franz Pöchhacker, *Introducing Interpreting Studies* (New York: Routledge, 2004), 9.

render not word-for-word, but sense-for-sense” as “word-for-word” produced nothing but “absurd translation.”²⁷⁵

Anyone who studies inter-lingual translation immediately gets caught in this classic dichotomic dilemma between “being faithful to the original, source language” and “being clear, natural, and readily understandable in the target language,” but quickly learns that “accurate or faithfully equivalent” translation never means achieving a target text which is identical to the source text at “all levels of the language hierarchy,” namely at all of the “lexical, syntactic, semantic, and pragmatic” levels, which is “largely unattainable.”²⁷⁶

Especially in oral, interpreting work, as opposed to written translation work, interpreters are always faced with “time pressure” in delivering contemporaneous translation back-and-forth to the interlocutors of the given dialogic oral discourse, which requires that these participants immediately understand what the other party has “meant.” Naturally, the most important criterion of “equivalence” which every interpreted rendition must meet becomes that of “pragmatic” equivalence,²⁷⁷ which is an equivalent of grasping “sense,” using the terminology coined by Danica Seleskovitch, a pioneering French conference interpreting practitioner and scholar.²⁷⁸

Even professionals in the legal community, if they have had abundant

²⁷⁵ Quoted in Jeremy Munday, *Introduction of Translation Studies: Theories and Application*, 3rd ed. (New York: Routledge, 2012), 31.

²⁷⁶ Sandra Beatriz Hale, *Community Interpreting* (New York: Palgrave Macmillan, 2007), 7.

²⁷⁷ Hale, *Community Interpreting*, 22-23.

²⁷⁸ Pöchhacker, *Introducing Interpreting Studies*, 56.

experience working with interpreters, know that “accuracy is *not* synonymous with literalism” (emphasis added).²⁷⁹ The fact that inter-lingual “equivalence”²⁸⁰ is achieved *not by* mechanical, “bottom-up, word-for-word” rendition but *only by* “top-down, pragmatic” rendition is a widely shared understanding among experienced interpreting professionals. In other words, once the intended meaning or the pragmatic meaning of the source language utterance is accurately comprehended, experienced interpreters immediately think of how they should re-formulate this very meaning in the target language in the same situational context.²⁸¹

2. Faithful Translation of the “Intended Meaning”

Just because this “non-word-for-word” is the premise about the nature of translation work, it does not have to cause immediate alarm for “betrayal.” The NAJIT homepage also states clearly that “[s]ome judges and attorneys have a mistaken belief that an interpreter renders court proceedings word for word, but this is impossible since there is not a one-to-one correspondence between words or concepts in different languages,” and that “[r]ather than word for word, then, interpreters render meaning by reproducing the full content of the ideas being expressed,” concluding that “[i]nterpreters do not interpret words; they interpret concepts.”²⁸² This, of course,

²⁷⁹ Laster and Taylor, *Interpreters and the Legal System*, 115.

²⁸⁰ “Equivalence” is the term used in Interpreting and Translation Studies to refer to the degree of “sameness” between the source language expression and the translated target language rendition.

²⁸¹ Hale, *Community Interpreting*, 24.

²⁸² “Frequently Asked Questions about Court and Legal Interpreting and Translating,” National Association of Judiciary Interpreters and Translators, <http://www.najit.org/certification/faq.php#techniques>.

never means that interpreters will add, omit, reduce, or alter the content. On the contrary, the code of ethics strictly stipulates that an interpreter interpret everything, “while preserving the tone and register of the original discourse,”²⁸³ which becomes of crucial importance in a police interview of evidence gathering work.

Thus, “accurate” comprehension of the source language utterance denotes “accurate” interpretation of its “intended meaning,” which interpreters will immediately re-formulate into a target-language utterance which has the same “pragmatic” meaning, and in so doing, interpreters try to preserve the same tone and register of the source language utterance, with no addition, omission, reduction, or alteration. This requires rigorous professional training, as has been repeatedly emphasized by all professionals in this field, including the author of this thesis.

3. Forensic Analysis of Interpreter-Assisted Legal Discourse

Unfortunately, however, there is very little public awareness about the pathetic lack of truly qualified interpreters in this initial, upstream criminal justice process, i.e. a custodial police interview, as has also been emphasized by many professionals and the author of this thesis. As Sandra Hale quotes Smirnov in her book, “Sadly enough, it is not the life of an interpreter, but that of his client that may become a price paid for a poor rendition.”²⁸⁴

In order to advocate such importance as well as to raise public awareness

²⁸³ “Frequently Asked Questions about Court and Legal Interpreting and Translating,” National Association of Judiciary Interpreters and Translators, *id.*

²⁸⁴ Hale, *Community Interpreting*, 26, quoting from S. Smirnov, “An Overview of Liaison Interpreting,” *Perspectives: Studies in Translatology* 5, no. 2 (1997): 215.

concerning the problems surrounding “legal interpreting,” many legal interpreting professionals have been conducting various forensic linguistic researches in recent years. Some of the landmark works include *The Bilingual Courtroom*, published in 2002 by Susan Berk-Seligson,²⁸⁵ an American interpreting scholar, which is a thorough ethnographic description of various actual roles played by court interpreters, based on the total 114-hour tape recordings of court proceedings at nine different courthouses. The 2004 publication, *Discourse of Court Interpreters*, by Sandra Hale,²⁸⁶ an Australian interpreting scholar, is also a similarly significant comprehensive research, which is a mixed-method research on court interpreting discourse and interpreters conducted to discover various effects and influences on court proceedings resulting from their interpreting work.

The above-mentioned books, however, are both on “court interpreters” in “down-stream” criminal justice process. Similar researches on “police interpreters” in “upstream” criminal justice process, in contrast, have been significantly scarce,²⁸⁷ reflecting the “non-public” nature of police interviews as opposed to the “public” nature of court trials.

Still, there have been several significant contributions made in this field so far. Cecilia Wadensjö, in her 1999 paper titled “Telephone Interpreting & the

²⁸⁵ Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago: University of Chicago Press, 2002).

²⁸⁶ Sandra Beatriz Hale, *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness, and the Interpreter* (Philadelphia: John Benjamins Publishing, 2004).

²⁸⁷ Hale also pointed this out as “very little research has been conducted into police interpreting,” mentioning data access as one barrier. Sandra Beatriz Hale, *Community Interpreting* (New York: Palgrave Macmillan, 2007), 79.

Synchronization of Talk in Social Interaction,”²⁸⁸ analyzed two police interview recordings, comparing on-site interview interpreting with telephone interview interpreting. Also, there are two major books specifically focusing on police interpreting issues. One is *Coerced Confessions: The Discourse of Bilingual Police Interrogations* by Susan Berk-Seligson,²⁸⁹ who conducted another vast research to demonstrate critically serious quality and impartiality issues of police officers used as ad hoc interpreters. The other one is *Interpreter-Mediated Police Interviews: A Discourse-Pragmatic Approach* by Ikuko Nakane,²⁹⁰ in which the author analyzed several recordings of Australian police interviews of Japanese suspects by sorting out different roles played by the interpreters who showed various footing shifts, using the analytical tool of “animator,” “principal,” and “author” roles theorized by Erving Goffman.²⁹¹

4. Where This Thesis’ Forensic-Linguistic Research Will Hopefully Stand

In light of the current paucity of research on authentic police interview interpreting, this research has attempted to make a contribution by sharing both quantitative and qualitative research results in the form of forensic linguistic analysis.

In addition, by conducting a research on an authentic interview recording submitted as a

²⁸⁸ Cecilia Wadensjö, “Telephone Interpreting & the Synchronization of Talk in Social Interaction,” *The Translator* 5, no. 2 (1999): 247-264.

²⁸⁹ Susan Berk-Seligson, *Coerced Confessions: The Discourse of Bilingual Police Interrogations* (Berlin: Mouton de Gruyter, 2009).

²⁹⁰ Ikuko Nakane, *Interpreter-Mediated Police Interviews: A Discourse-Pragmatic Approach* (Chennai: India, 2014).

²⁹¹ Erving Goffman, *Forms of Talk* (Philadelphia: University of Pennsylvania Press, 1981). Also see Part Two, Chapter IX (this chapter), B-2.

court exhibit, the thesis hopes to demonstrate, in the form of an action research, if and how the participants at each stage of the criminal justice process can determine the true “conduit” nature (“accuracy” and “impartiality”) of the interpreting work, while assessing the need and feasibility of the “verification” of such “conduit” nature through the introduction of mandatory recording and authentication.

Chapter X

Used Data and Methodology

The data used for the forensic-linguistic analysis of this thesis is a 77:39-minute video recording of a Toronto Police interview of an Afghan immigrant murder suspect, which was conducted with a Dari interpreter on March 19, 2008.²⁹²

A. Background of the Data: Toronto Police Interview with a Dari Interpreter

Unlike court trials, police interviews are basically non-public and inaccessible. Though digital recording of police interviews is already in practice in many common-law countries such as the U.K., Ireland, Australia, New Zealand, Canada, and in 22 states of the United States, as has been mentioned repeatedly,²⁹³ not all of them are actually played in court, let alone made more publically accessible, e.g., via internet postings, etc. Still, video clips of authentic police interviews are increasingly appearing on the internet, after having been submitted as exhibits in trials, having been actually played publically in court, and thus having entered the public domain.

1. Acquisition of Raw Data

Nevertheless, the ones with an interpreter are extremely rare, perhaps for the

²⁹² “Peer Khairi Police Interrogation,” <https://www.youtube.com/watch?v=aU9JEFqjYJA> (Retrieved on Dec. 22, 2014), is a 77:39-minute recording and is a portion of the Toronto Police interview of an Afghan immigrant murder suspect with a Dari interpreter, which was conducted on March 19, 2008. This recording was posted on YouTube by *Financial Times* on October 19, 2012.

²⁹³ See Part One, Chapter VII, B-2, *supra*.

purpose of protecting the interpreters' identity. This recording, which the author of the thesis finally found after many months of search on the Internet, was also one of such extremely rare video clips posted on YouTube by *Financial Times* on October 19, 2012, after having been submitted as an exhibit in a Toronto trial that took place in 2012. It was submitted as an exhibit *not* because of any interpreter-or-interpretation-related issues but because of a technical accident that had stopped the recording after the first 77:39 minutes.

2. Reasons for the Data Selection

The author of the thesis decided to use this “unedited, first 77:39 minutes of the Toronto police interview” as the data for the thesis’ forensic linguistic analysis for the following three reasons.

First, since the recording is already in the public domain, its use, especially for an academic research, presented no copyright or ethical issue, which the author also confirmed both with: 1) Financial Post/National Post/canada.com, and 2) the Toronto Police Service, before commencing the analysis.

Second, since there were no “interpreting accuracy or impartiality” issues concerning the first 77:39 minutes that survived the technical accident, this recording can be regarded as an example of police interview interpreting that perfectly satisfied the “conduit” standards of the then Ontario Superior Court of Justice.

Third, Dari, the suspect’s native language, is a completely “foreign and undecipherable” language for the author, just as most foreign languages are for interviewing police officers as well as for the triers of fact in interpreter-assisted trials. On one hand this undecipherability would naturally present many challenges in the

actual research, which it certainly did. On the other hand, however, it would enable the author to also conduct the research from the standpoint of an ordinary, mono-lingual interviewer or a fact-trier, as one type of an action research.

B. Method of Analysis

The first question the thesis addressed was: to what extent the monolingual parties (the police and the suspect) in a police interview can judge the interpreting accuracy and impartiality by only an indirect means without the actual verification of the accuracy and impartiality?

1. First Stage: Transcription and ELAN

To answer this question, the author began the work by first transcribing the entire interview, line by line, directly from the raw YouTube recording. This was a long, time-consuming work, taking a total of approximately 25 hours, starting from June 25 to July 5, 2015. After its completion, the author then used a transcription software named ELAN, an audio-visual transcription software made available for free by a Dutch research institute.²⁹⁴ Though ELAN in the version used by the author did not “enhance” the quality of the recorded voice itself, it had a speed control function which greatly helped to confirm the details of otherwise inaudible sections.

In addition, the use of this software was imperative for the actual physical data collection, such as: 1) each utterance length, and 2) the pause length before each utterance. ELAN transformed these physical sound data into numerical data, which

²⁹⁴ Max Planck Institute for Psycholinguistics, Wundtlaan 1, 6525 XD Nijmegen, The Netherlands. Their website address is: <http://www.mpi.nl/>, and the software can be downloaded from: <https://tla.mpi.nl/tools/tla-tools/elan/>.

were also readily downloadable onto an EXCEL spreadsheet for statistical analyses.²⁹⁵

One thing that must be noted, however, is that the process of measuring the length of every single pause and utterance of all the speakers for the entire 77.39-minute recording was an endlessly long and laborious process. Every one of the 1,283 total utterances and 1,283 total pauses, thus a total of 2,566 units, had to be measured manually scrolling and clicking a mouse on the soundwave diagram screen. On the average, it took nearly one hour to process one minute amount of data, so the entire work took close to 80 hours. Since the obtained data was very valuable, it was worth the time, but in the future, it would greatly help such research work if more technological improvement is made with relevant new software to ease such data processing work.

While recording the utterance data on the ELAN screen, the author also noticed very interesting “discourse pattern cycles,” which seemed to be closely related to what Georgina Heydon mentioned in her book about the “turn-taking” in a discourse like police interview in which there is a clear power imbalance,²⁹⁶ which will be discussed in the next chapter.²⁹⁷

2. Indirect “Accuracy” and “Impartiality” Assessment by the Police Officer

The initial transcript had only English sentences written down, which are: 1) the utterances of the interviewing police officer, and 2) the English translations of the

²⁹⁵ All the collected numerical data are presented in Appendix 2, *infra*.

²⁹⁶ Heydon, *The Language of Police Interviewing*, 94.

²⁹⁷ See Chapter XI, C-1, *infra*.

suspect's statements rendered by the interpreter.

This would be as much as an interviewing police officer, a prosecutor, the defense counsel, and the triers of fact can possibly understand through the accessible information given in English only. Actually, however, there are two additional discourses: 3) the interpreter's translation of the officer's questions into Dari, and 4) the suspect's original statements made in Dari. Nevertheless, for average English speakers, they are usually perceived simply as unintelligible human voices.

At this stage, the average English speaking participant can only indirectly assess the "accuracy" and "impartiality" of the interpreter probably by the following means or data: 1) the coherence of the correspondence between the questions asked and the answers returned; 2) the number of extra exchanges (extra round-trip exchanges in Dari between the interpreter and the suspect) before the completion of each question-and-answer cycle; 3) the total number of each participant's utterances; and 4) comparison of utterance time-length between the original statement and the interpreted rendition

3. Indirect "Accuracy" and "Impartiality" Assessment by the Suspect

From the suspect's viewpoint, the clues for indirect "accuracy" and "impartiality" assessment become more limited, which probably are: 1) the coherent succession and logical development of the questions being asked by the interviewing police officer; 2) the repetition of the same questions; 3) the number of extra exchanges (extra round-trip exchanges in English between the interpreter and the police officer) which were not translated to the suspect; 4) the total number of each participant's utterances; and 5) comparison of utterance time-length between the original statement

and the interpreted rendition.

4. Indirect “Accuracy” and “Impartiality” Assessment by English-Speaking Fact-Triers

For the prosecutor, the defense counsel, the judge, and the jury, the extent of possible indirect assessment of “accuracy” and “impartiality” through the use of the video recording only is basically the same as that of the interviewing police officer, although by watching and listening to the video, the fact-triers may also be able to observe: 1) the interpreter’s role shift in English, i.e., animator, principal, and author roles based on Goffman’s 1981 analysis model;²⁹⁸ 2) comparison of pause length, especially how quickly and proficiently the interpreter’s each rendition is presented; and 3) the overall impression of the interpreter and the image of the suspect created through the interpreter’s translations of the suspect’s statements.

Regarding this interpreter’s role shift or footing shift described by Goffman,²⁹⁹ Nakane contends that interpreters in police interviews should always remain in the “animator” role, which is the only acceptable role in line with the “code of ethics.”³⁰⁰ Nakane mentions that though the “principal” role is often observed in making “repairs,” ideally such repairs should also be made within the role of an “animator.”³⁰¹ Further, Nakane states that the “author” role clearly deviates from the “code of ethics,” but that interpreters also shift to this role to supply what they judge to be critical cultural

²⁹⁸ Erving Goffman, *Forms of Talk* (Philadelphia: University of Pennsylvania Press, 1981). Also see Chapter IX, B-2, *infra*.

²⁹⁹ Goffman, *Forms of Talk*.

³⁰⁰ Nakane, *Interpreter-Mediated Police Interviews*, 220.

³⁰¹ Nakane, *Interpreter-Mediated Police Interviews*, 220.

information to prevent miscommunication or to ensure effective communication.³⁰²

The thesis will use the same analytical tool of “animator, principal, and author” created by Erving Goffman,³⁰³ especially to find out “to what extent” and “how if ever” the interpreter played the role of “principal” and “author.” This will determine the actual “conduit” boundaries found acceptable by the Ontario Superior Court of Justice in 2012.

5. Second Stage: 22-Hour Accuracy Verification Marathon with a Dari-Japanese Interpreter

The second question the thesis asked was: what would be the testimony of an “expert witness” who has transcribed and authenticated this recording? The next stage, therefore, was to actually “verify” the “accuracy” of all the statements made in Dari: 1) the interpreter’s translations of the interviewing officer’s statements into Dari; and 2) the suspect’s original statements in Dari.

This was not as easy as had been originally envisaged. For one thing, the number of Dari interpreters who could serve as a “check interpreter” for this research was extremely limited, even in the entire Tokyo area, where the author of this thesis resides. Dari is considered to be a dialect of Farsi (Persian), and as in the case of most “minor” or “rare” languages, this was a task only a native speaker of Dari (or Farsi, who could understand Dari as a “semi” native language) could handle. The author contacted one of the interpreting service agencies in Tokyo that specializes in minor or rare languages and hired a Dari interpreter, a native speaker of Farsi (Persian) who also

³⁰² Nakane, *Interpreter-Mediated Police Interviews*, 78.

³⁰³ Goffman, *Forms of Talk*.

worked as a Dari interpreter.

Initially, the author had expected this work to be completed in one or two sessions of 4 hours each at maximum (approximately a total of 8 hours). The total number of the interpreter's utterances in Dari was 305, and that of the suspect was 346, their total combined time amounting to only 30.5 minutes. Since the original recording, including the interpreter's back-and-forth translations, was 77:39 minutes, the author's original projection did not seem particularly unreasonable.

As it turned out, however, the total required time exceeded 22 hours, which began on July 17, 2015 and lasted till August 27, 2015 on five separate sessions. There are several possible reasons for this. One is the recording quality, and the second is the participants' speaking style, especially that of the suspect. The interpreter was having an especially difficult time figuring out the suspect's utterances, which also contained more "provincial" expressions and speech style,³⁰⁴ which still might have been easier if the interpreter had been able to translate sitting directly next to the suspect in the same room, which was not the case. This required a number of repetitive replays of the same section.³⁰⁵ The third is the translation into Japanese. Though the interpreter had over ten years of experience doing a wide range of interpreting and translation work between Farsi/Dari and Japanese, including work with the Japanese police, the prosecutor, the court, as well as various mass media in Japan, still translating into one's non-native language (Japanese) was a bigger challenge than the other way, which required numerous confirmations of the meaning of the translated statements between the author

³⁰⁴ The suspect, according to his own testimony, was almost 61 years old at the time of the interview and was unable to read or write even his native language, Dari.

³⁰⁵ Just by simple math, the average time required for the translation of each single Dari utterance amounted to 2:03 minutes.

and the interpreter. The fourth and the final reason is also on the part of the author, who needed to ask additional questions about each expression and various nuances, confirming them using several Dari-English dictionaries.³⁰⁶

The entire 22-hour-long verification session was also recorded. The author then translated into English the check interpreter's recorded oral translations from Dari to Japanese, which was directly typed into the transcript. This re-translation process took at least another 22 hours, just to re-play the recording.

To summarize the process, the Dari-Japanese check interpreter orally translated all of the Dari statements in the original Toronto Police recording into Japanese, all of which were digitally recorded by the author then and there. The total recording time amounted to over 22 hours. The author then translated and typed into the transcript the interpreter's recorded Japanese translations into English. The reason for this complex, relay translation was due to the fact that there was no Dari-English interpreter in the Tokyo area at the time of this research.

6. "Accuracy" and "Impartiality" Verification by an "Interpreting Expert Witness"

Though laborious, this second "accuracy verification" revealed a number of new discoveries and enabled access to otherwise unavailable data, which would become possible only when a recording of a bilingual police interview is verified and authenticated. This included: 1) confirmation of the content of extra roundtrips made

³⁰⁶ Published resources on the Dari language are extremely limited, and available dictionaries are very difficult to use for those who are not familiar with their writing system. The author used the following two dictionaries to confirm and verify the meaning of each key word with the check interpreter: 1) Carleton Bulkin, *Dari: Practical Dictionary*, 2 ed. (New York: Hippocrene Books, 2012); and 2) Amir Khan and Noor Ul Amin, *English to Dari Dictionary with English Phonetics* (Alexandria, VA: KTL Communications LLC, 2013).

in Dari between the suspect and the interpreter; 2) verification of the interpreter's translation accuracy, i.e., verification of what exactly was not quite accurate, clarification of uncertain points, and comparison of unconfirmed impressions with verified facts.

7. "Accuracy" and "Impartiality" Determination by the Triers of Fact

The final question the thesis addressed was: how could the triers of fact determine the "accuracy" and "impartiality" from: 1) the digital recording, and 2) the authenticated transcript, both as evidence? Though the thesis can only speculate from their point of view, the author of the thesis will try to assess which factors in the proffered evidence might play a significant role in making such determinations. The thesis will then make a final analysis on whether an access to such an authenticated, check interpreter's translation transcript as an extra piece of evidence would be truly helpful and valuable, instead of just being superfluous or insignificant.

Chapter XI

Results and Analyses 1: From Interview Participants' Standpoint

The following is a brief summary of the case's background extracted from *R v. Khairi*, 2012 ONSC 5549.

A. *R v. Khairi*, 2012 ONSC: Basic Facts of the Case

The incident happened in the afternoon of March 18, 2008. At 1:50 p.m., the suspect, putatively 61 years old, called 911, requested a Hindi or Farsi interpreter, and reported the murder of his wife that had occurred at his Etobicoke apartment in Toronto, Canada.³⁰⁷ During the telephone exchange that took place in Hindi, 911 arguably found that in fact the suspect himself had murdered his own wife, which later became one point of dispute during the custodial interrogation by the Toronto Police that ensued.³⁰⁸ The police arrived at the scene and arrested the suspect at 2:18 p.m., after giving the Canadian police caution in English, which, the police observed the suspect most probably did not understand due to the language issue.³⁰⁹

1. Language Issue and Interpreter

The suspect was then taken into custody, after having been booked in with the aid from a Hindi-speaking officer, who tried to explain the rights to the suspect, which

³⁰⁷ *R v. Khairi*, 2012 ONSC 5549, [5].

³⁰⁸ *R v. Khairi*, 2012 ONSC 5549, [6].

³⁰⁹ *R v. Khairi*, 2012 ONSC 5549, [7-8].

did not turn out to be successful, either.³¹⁰

The Toronto Police were not able to determine which language the suspect really spoke, thinking initially that it was Hindi, for the reason that Hindi was the first language the suspect requested on the 911 call.³¹¹ It was not until past midnight on that same day, after another unsuccessful attempt with a Hindi interpreter, that the police finally found that the suspect's native language was Dari.³¹² A professional Dari interpreter, who was employed by an interpreting service company, was finally summoned and began his work at around 1:00 a.m. midnight.³¹³ The interpreter first served on a thirty-minute-long, three-party telephone talk with the suspect and the duty counsel, who, through the interpreter, explained to the suspect his rights, after which the police began the interpreter-assisted interview at 2:50 a.m.³¹⁴

2. Recording Accident and Interpreter's "Will-Say Statement"

When the interview ended at 6:10 a.m., the two interviewing officers discovered that the recording had stopped after 77:39 minutes, only covering the first one-third of the interview which had lasted more than three hours, despite the fact that the suspect finally confessed during the latter part of the interview.³¹⁵

³¹⁰ *R v. Khairi*, 2012 ONSC 5549, [9-10].

³¹¹ *R v. Khairi*, 2012 ONSC 5549, [37].

³¹² *R v. Khairi*, 2012 ONSC 5549, [49-50].

³¹³ *R v. Khairi*, 2012 ONSC 5549, [55].

³¹⁴ *R v. Khairi*, 2012 ONSC 5549, [59-61].

³¹⁵ *R v. Khairi*, 2012 ONSC 5549, [62, 66].

In order to rescue the situation as much as possible, the police officers asked the interpreter to prepare a “will-say statement” and to later testify in court. They asked the interpreter to write an “arms-length” account of what he remembered as having been said during the interview.³¹⁶

The interpreter felt very “uncomfortable” about complying to this request at first, as he believed that giving a testimony for the police would “compromise” what he believed to be the interpreter’s role, which had to be always “impartial.” After discussing this with his employer, however, who “reassured” him that doing this would not be “inappropriate,” the interpreter finally consented, several days later, to prepare such a statement and to testify in court for the police.³¹⁷

3. The Recorded Interview Content

The interview, the recording of which stopped after the first 77:39 minutes, is clearly divided into the following five parts (with each allotted time) : a) the introductory recording start routine (02:13 minutes); b) the administration of the Canadian police caution (17:37 minutes); c) questions about the suspect’s prescriptions (14:63 minutes); d) the suspect’s past traffic accident (17 minutes); and e) the interrogation about the murder (26:26 minutes). Since the actual interview itself started from 02:13 minutes after the start of the recording, the thesis has looked at the following four main scenes as the subject of the analysis, as in Table 1.

³¹⁶ *R v. Khairi*, 2012 ONSC 5549, [68].

³¹⁷ *R v. Khairi*, 2012 ONSC 5549, [68].

Table 1: Interview Scene Breakdown

	Scene 1	Scene 2	Scene 3	Scene 4
Topic	Police Caution	Prescriptions	Traffic Accident	Murder
Time (minutes)	17:37 minutes	14:63 minutes	17 minutes	26:26 minutes

B. Facts Perceived from Monolingual Interview Participants' Standpoint

Monolingual participants in a police interview, i.e., the police officer and the suspect, have only limited information to base their real-time judgement on as to whether their statements are “accurately” translated with no intentional or unintentional “distortions.” The first set of facts and data shown in this section, therefore, will try to delineate how and to what extent such monolingual participants could make an assessment with the given limitations.

1. Total Number of Utterances and Their Breakdown

In a more ordinary conversation, what we usually expect is a natural turn-taking among the participants,³¹⁸ which we also expect to be distributed more or less equally among them, though of course some people often become more “talkative” than others if not “monopolizing.” In a more institutionalized discourse, such as an interview, a press conference, or a cross-examination in court, however, such basic rules of conversation change greatly to serve each institutional objective. A police interview or interrogation is one typical example.

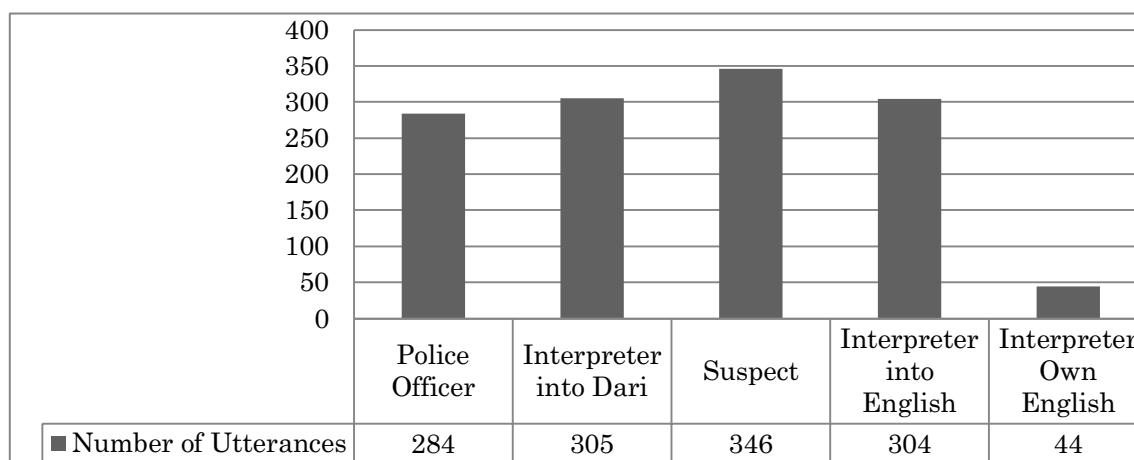
³¹⁸ Harvey Sacks, Emanuel A. Schegloff, and Gail Jefferson, “A Simplest Systematics for the Organization of Turn-Taking for Conversation,” *Language* 50, no. 4 (1974): 696-701.

We should, therefore, begin with the total number of utterances made by each interlocutor. Table 2 below shows the total number of utterances per interlocutor: 1) the police officer's English utterances; 2) the interpreter's translations from English to Dari; 3) the suspect's utterances in Dari; 4) the interpreter's translations from Dari to English; and 5) the interpreter's own utterances in English,³¹⁹ which are also shown in a graph in the following Chart 1.³²⁰

Table 2: Total Utterance Breakdown (1,283 Total Utterances)

	Police Officer	Interpreter into Dari	Suspect	Interpreter into Eng.	Interpreter Own Eng.	Total
Utterances	284	305	346	304	44	1,283

Chart 1: Total Utterance Breakdown (1,283 Total Utterances)



³¹⁹ This fifth category is what potentially may be categorized into either “principal” or “author,” by Goffman’s analytical tool. See Chapter IX, B-2, *supra*.

³²⁰ In this research, all of the 1,283 utterances that have been transcribed are numbered with each code initial: 1) “P” for the interviewing police officer; 2) “ID” for the interpreter into Dari; 3) “S” for the suspect; 4) “IE” for interpreter into English; and 5) “I” for the interpreter’s own statements in English. The complete transcript is presented in Appendix 1.

An immediate question that arises is: why are there number discrepancies between: 1) the police officer's utterances in English and the interpreter's utterances (translations) in Dari; and 2) the suspect's utterances in Dari and the interpreter's translations of them in English? The interpreter made 21 (=305 minus 284) extra utterances in Dari, which may not have been translations. Similarly, the interpreter may not have translated 42 (=346 minus 304) utterances made by the suspect. In addition, the interpreter made 44 English utterances of his own.

It would seem that the interpreter's additional utterances in Dari were probably the result of "extra round-trip exchanges" with the suspect, which, however, cannot be verified unless and until the interpreter's utterances in Dari and the suspect's utterances in Dari are both "check-translated" back into English.

2. Extra Monolingual Round-Trips

Such utterance number discrepancies are usually sensed by the participants as a possible occurrence of "extra monolingual round-trips," i.e. extra verbal exchanges between the interpreter and one of the parties, excluding the other.

If the interpreter moves on without sharing the information with the excluded party, what might have been a completely harmless exchange could start spawning seeds of distrust on the part of the excluded party. Without the help of the interpreter, it is impossible for a monolingual participant to find out real-time as to what has been said. Therefore, this thesis examined these "monolingual round-trips" (in Dari and English) that seemed to have taken place during the interview, which, however, was only made possible later with the help of the "check interpreter," not at this first stage of indirect observations from the standpoint of "monolingual participants."

Before discussing these findings, therefore, let us quickly look at another, similarly basic factor which is also perceived often by monolingual participants: the time spent for each utterance.

3. Total Time Spoken and Per Utterance Time Correlation

“Longer or shorter time” used for the target-language translation in comparison with the time spent for the original, source-language utterance is also another, very common source of frustration and suspicion in an interpreter-assisted discourse. This is exactly what Bob Harris (played by Bill Murray) was trying to express in the 2003 Sofia Coppola film *Lost in Translation*, when he repeatedly asked his interpreter, “Is that everything? It seems that he said quite a bit more than that,” after the interpreter’s extremely skimpy translation.³²¹

Also, in *Ko v. U.S.*, a case in which “interpreter bias” became an issue, the ruling noted that when the defense counsel began cross-examining one of the witnesses, he noticed that the witness was “saying an awful lot for what we’re getting back in English.”³²² Let us, therefore, look at the total time spent for each discourse in Chart 2 below, to see if there are any unusual discrepancies.

³²¹ *Lost in Translation*, Dir. Sofia Coppola, American Zoetrope, 2003.

³²² *Ko v. United States*, 694 A.2d 73 (D.C. App.1997), 77.

Chart 2: Total Time in Seconds (Utterances and Pauses)

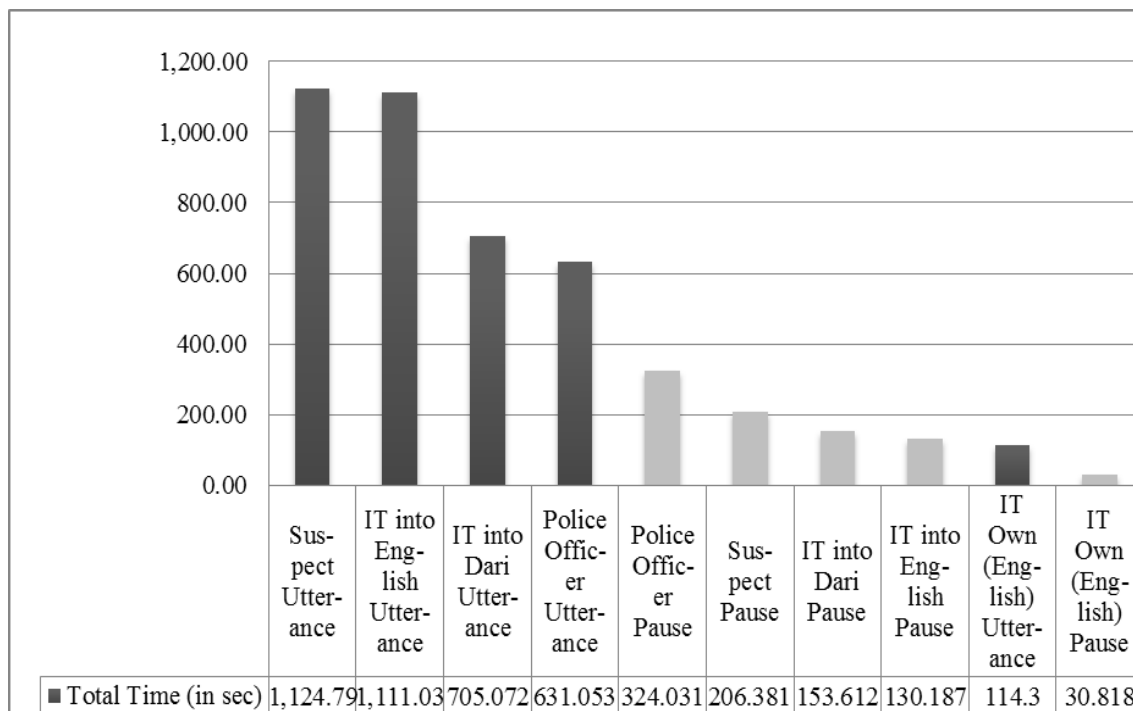


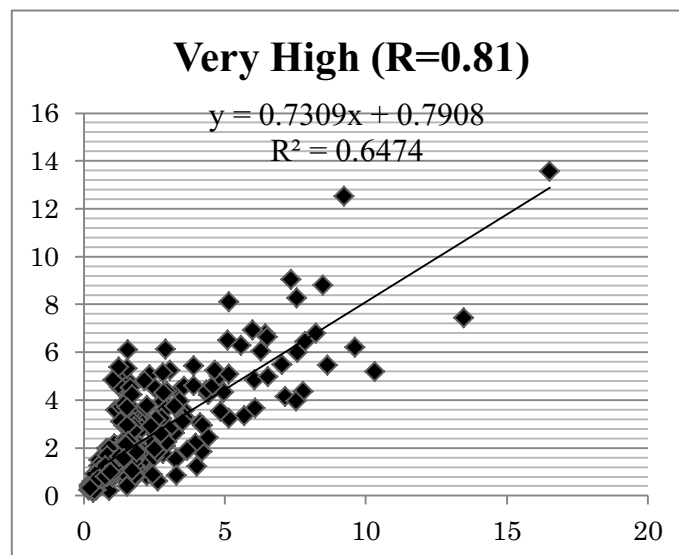
Chart 2 shows the total amount of time (in seconds) used by each interlocutor: the total time spent for both the utterances (shown in black) and the pauses (shown in gray) before each utterance. The chart seems to show a fairly good balance between each corresponding discourse pair.

The suspect spent the largest amount of total time (1,124.79 total seconds) with the accompanying translation by the interpreter (into English), spending the second largest time amount, nearly the same total time of 1,111.03 seconds. The police officer used 631.053 seconds, only a little more than half of the suspect's total time, meaning that the suspect spoke nearly twice the amount of time spent by the interviewing police officer. The time spent for the accompanying translations by the interpreter (into Dari) was 705.072 seconds, slightly more than that for the original English utterances made by the police officer.

Chart 2, however, only shows the total sum only, so from this chart alone, we cannot determine exactly if the interpreter's each rendition was faithfully close to each matching source language utterance in terms of the time length.

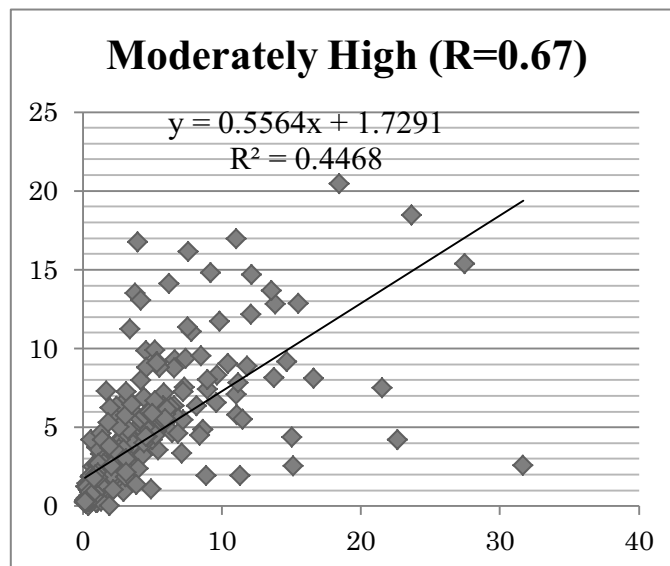
For this reason, the thesis has also conducted a correlation coefficient test to see if every pair of an original utterance and its translation in the entire recording had spent a "statistically similar" time amount. This verification work was also made possible only after all the utterances in Dari in the recording were "check-translated" by the "check interpreter," because sorting out "correctly matching pair" for each utterance was an impossible task when one understood only one of the two languages. After identifying correctly corresponding utterance pairs for both English-Dari translations (244 pairs) and Dari-English translations (286 pairs), the data was processed. Chart 3-1 below shows the correlation coefficient between the "police officer's utterance time in English" and the "interpreter's translation time of those utterances into Dari," which shows a "very high" correlation ($R=0.81$).

Chart 3-1: Police Officer's Utterance Time and Interpreter's Translation Time



Similarly, Chart 3-2 below shows the correlation coefficient between the “suspect’s utterance time in Dari” and the “interpreter’s translation time of those utterances into English,” which also shows a “moderately high” correlation ($R=0.67$).

Chart 3-2: Suspect’s Utterance Time and Interpreter’s Translation Time



Therefore, if we look at the “time” factor only, or “equivalence in terms of the rendition time” only, the results seem to indicate that this interpreter was quite proficient and reliable.

4. Average Pause Time

Chart 2, *supra*, also revealed something very interesting as well as crucially important: the total amount of pause time spent by each interlocutor. It seems that the interpreter spent significantly less total amount of pause time than the other two speakers.

Still, Chart 2 shows the total sum only. Therefore, in order to get a more

accurate picture, let us now look at the “average” pause time of each interlocutor in each discourse. Chart 4 below shows the average pause time of each interlocutor.

Although there are three participants, the average pause time was measured for each one of the following 5 discourses: 1) police officer, 2) interpreter (speaking in Dari or translation into Dari), 3) suspect, 4) interpreter (translation into English), and 5) interpreter’s own (speaking in English).

Chart 4: Average Pause Time in Seconds

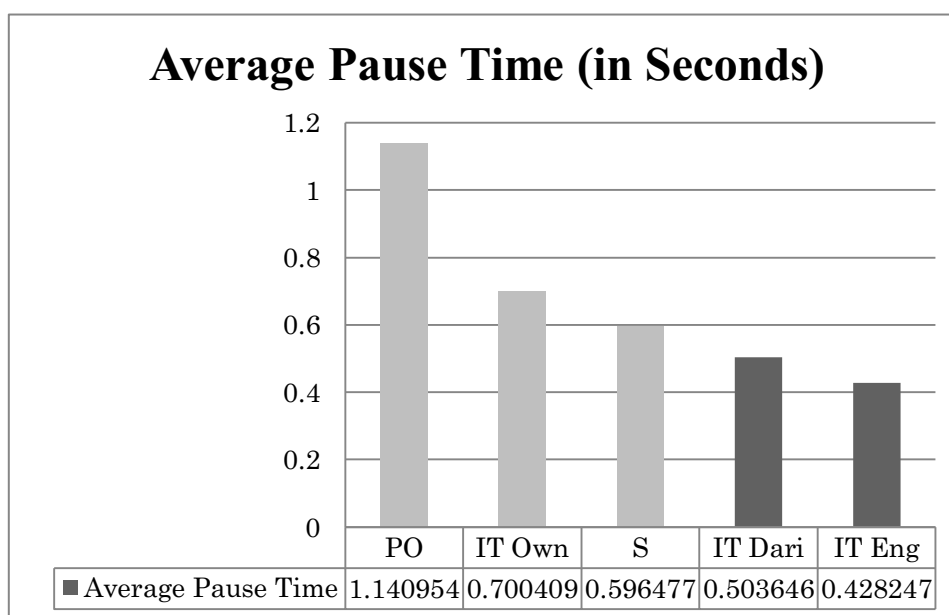


Chart 4 shows a very interesting result. On the average, the interviewing police officer paused the longest before making each statement, which was longer than one second (1.14 seconds). Also, the interpreter’s translations, both into Dari and into English were rendered with the shortest pause at the beginning of each rendition: 0.504 second from English into Dari, and 0.428 second from Dari into English. Though this is not the purpose of this thesis, such extreme contemporaneity verified here would seem

to very easily support even the application of FRE 803(1) “Present Sense Impression” for a “hearsay exception.”³²³

Of course, the only ironical “fly in the ointment” in using FRE 803(1) “Present Sense Impression” for interpreters’ extrajudicial translations is that the main rationale for this rule, which is that the statement was made within too short a time for the declarant to fabricate anything untrue, or more simply the “no-time-to-think” rationale, does not quite apply for interpreting work, which is one of the most “mentally demanding” activities, requiring maximum cognitive concentration.

Another interesting thing that can be observed from Chart 4 is that the same interpreter paused a much longer time when making his own statements in English, even longer than the suspect. The suspect in this interview usually paused only a surprisingly short time, which may have been a result of the fact that many of his short responses were simple “nodding” responses in Dari, which was “*baleh*,”³²⁴ which, of course, was another fact that was only verified later by the “check translation.”

Another reason for the suspect’s very short average pause time might have been that the

³²³ Though not a mainstream, there have been some jurisdictions in the U.S. which have applied FRE 803(1) “Present Sense Impression” to use a “hearsay exception” for interpreter-assisted out-of-court testimonies, e.g., *New Jersey Division of Child Protection Permanency v. H.A. and M.A.*, N.J. Super. Unpub. (2015), 16-17. Also see, G. Michael Fenner, “Privileges, Hearsay, and Other Matters,” *Creighton Law Review* 30 (1996): 812, “a simultaneous translation would fit under the first exception in Rule 803, the present sense impression”; David F. Binder, *Hearsay Handbook*, 4th., 2013-2014 ed., (Danvers, MA: Thomson Reuters, 2013), 880, “[i]f an interpreter makes a contemporaneous translation of spoken words, the interpreter’s reporting of what he hears should qualify for exception from the hearsay rule as present sense impressions. It is no different in principle from a sports broadcaster’s contemporaneous reporting of what he sees taking place on the ball field.” It is very interesting that this note by Binder describes exactly the same thing as what Goffman described as a characteristic of an “animator” or a “sound box.” See Chapter IX, B-2, *supra*.

³²⁴ Out of the suspect’s total 346 utterances, 54 were this simple nodding response “*baleh*.”

suspect made numerous interruptions throughout the interview.³²⁵

5. Pause Time and Interpreting Proficiency

The core difference between interpreting work and written translation work resides in the crucial “time” factor. Interpreters are always under an “enormous” time pressure, which also means that this pause length or the time lag between the end of the source-language statement and the start of its translation signifies the general proficiency level of an interpreter, the ultimate of which is the skill to perform the so-called “whispering (or *chuchotage* in French),” a live, on-spot “simultaneous” oral translation.

Therefore, from a purely forensic linguistic standpoint, the data on this interpreter’s pause time in comparison with the other interview participants’ as well as that of the interpreter himself’s own utterances in English merits another statistical test to determine the “significance” of its brevity. The thesis, thus, conducted the following four sets of “pause time comparison” *t*-Test: 1) the police officer and the interpreter’s translation into Dari; 2) the suspect and the interpreter’s translation into English; 3) the interpreter’s translation into Dari and the interpreter’s translation into English; and 4) the interpreter’s translation into English and the interpreter’s own utterances in English. Each comparison test is accompanied by histogram charts which visually demonstrate the pause patterns of each interlocutor. The horizontal axis shows the pause length in seconds, and the vertical axis shows the number of pauses made.

³²⁵ The suspect made a total of 14 interruptions during the recorded part of the interview.

Chart 5-1: Police Officer and Interpreter's Translation into Dari: Significant Difference

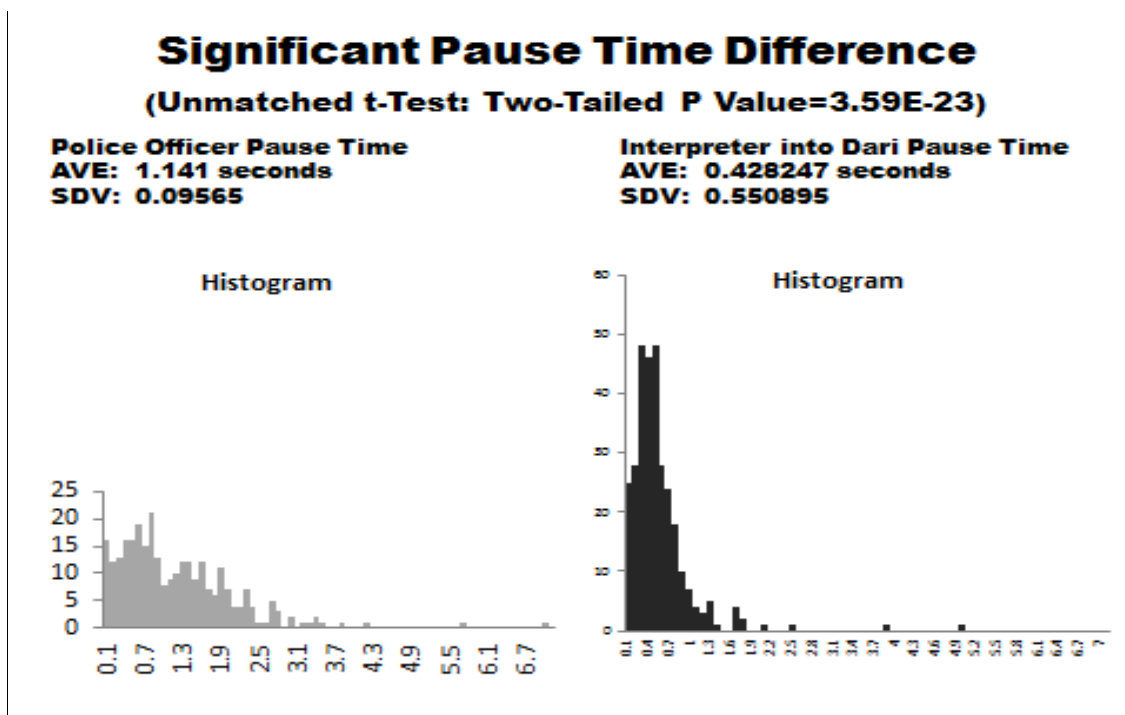


Chart 5-2: Suspect and Interpreter's Translation into English: Significant Difference

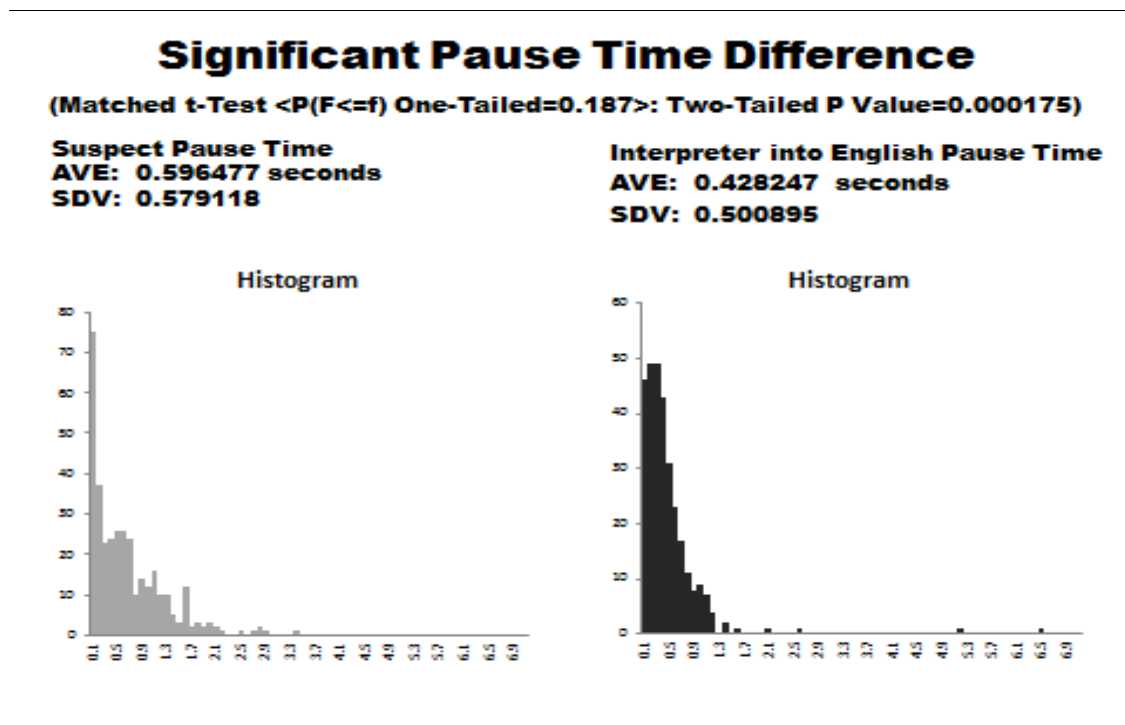


Chart 5-3: Interpreter into Dari and Interpreter into English: No Significant Difference

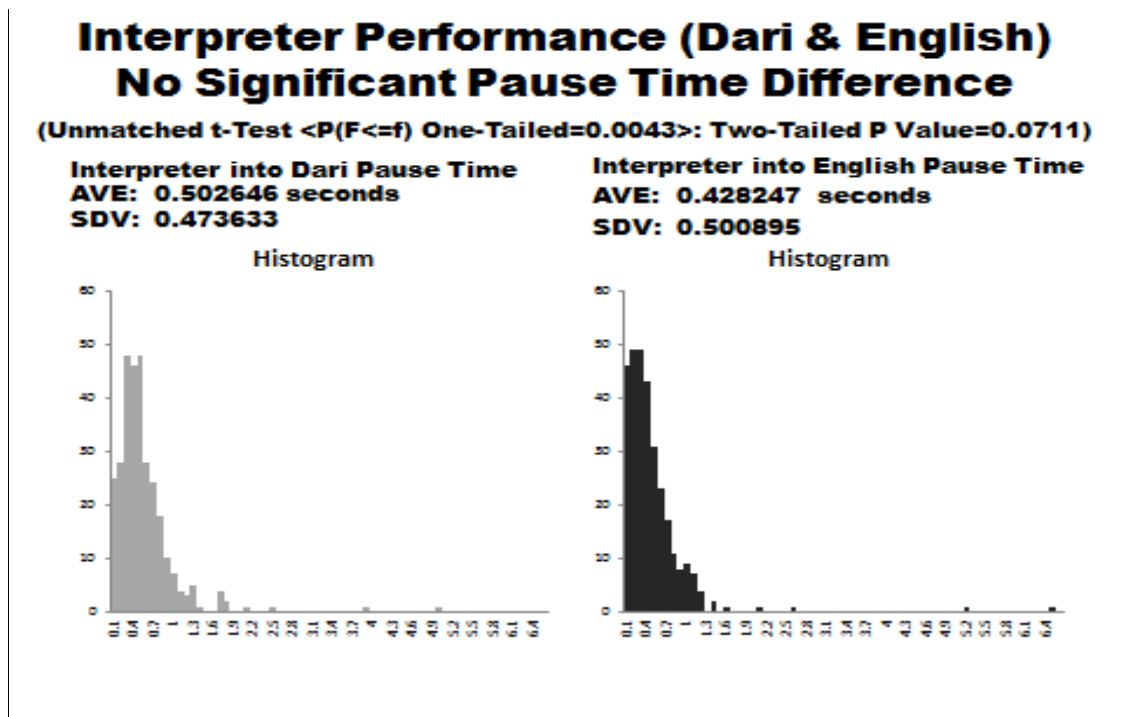
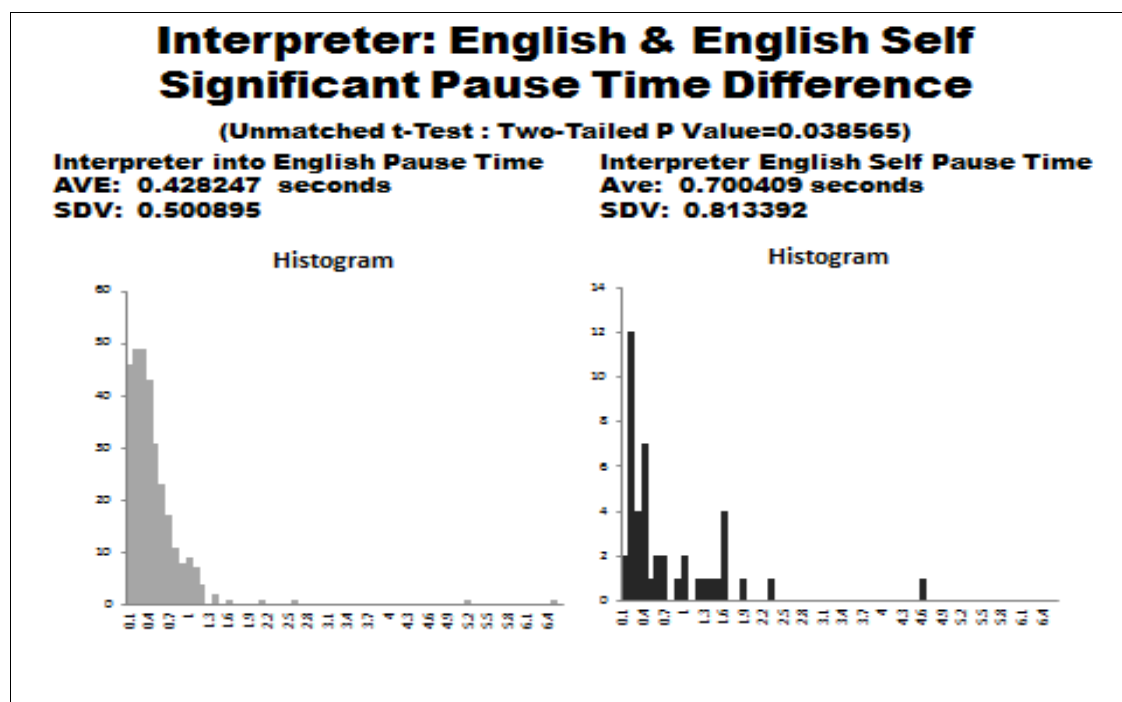


Chart 5-4: Interpreter into English and Interpreter's Own in English: Significant Difference

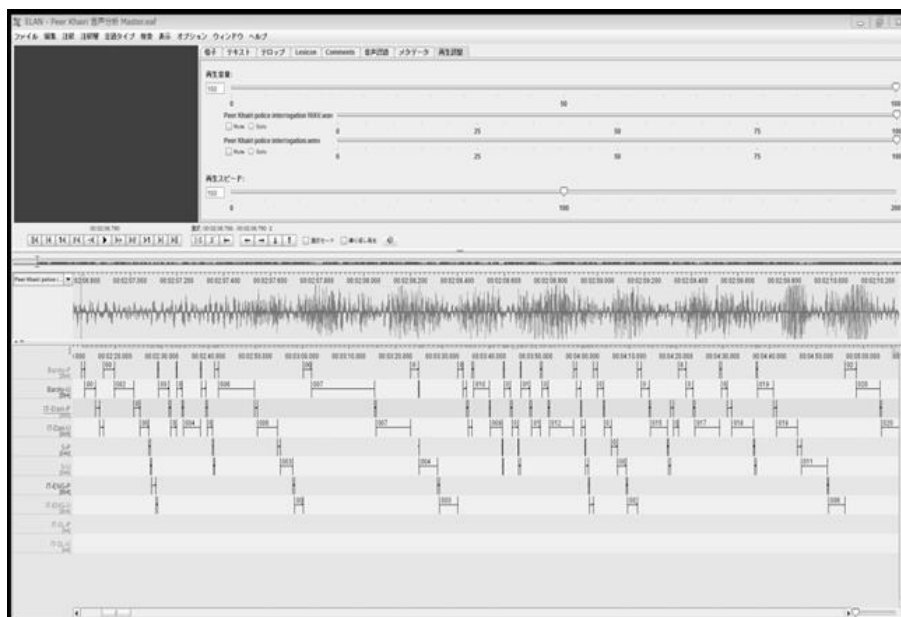


Thus, the results shown in these four charts above indicate that the interpreter's pause time in his translation renditions was significantly shorter than that of all the other participants, including the interpreter's own statements made in English. Also, this interpreter demonstrated a highly stable proficiency in his interpreting delivery in both language directions. He rendered a total of 609 translations back and forth with an average 0.5 second pause time from English into Dari and 0.428 second pause time from Dari into English during the entire 77.39 minutes without taking one single break. Regarding the "speed" and "fluency" of the interpreting proficiency, therefore, this interpreter seems to have demonstrated a sufficiently acceptable skill level.

C. Question-and-Answer Turn-Taking Cycle Patterns

As was mentioned in Chapter X, B-1, *supra*, while transcribing the utterance data on ELAN, the author noticed an interesting turn-taking cycle patterns, which appeared on the ELAN screen like the following Chart 6.

Chart 6: Police Interview Turn-Taking Cycle Patterns on ELAN



The 10 horizontal tiers shown below the soundwave diagram screen are, from top to bottom, in the order of: 1) police officer's pause; 2) police officer's utterance; 3) interpreter's (into Dari) pause; 4) interpreter's (into Dari) utterance; 5) suspect's pause; 6) suspect's utterance; 7) interpreter's (into English) pause; and 8) interpreter's (into English) utterance. The two extra tiers at the very bottom are: 9) interpreter's (own statement) pause; and 10) interpreter (own statement) utterance.

1. Police Officer's Institutional Power in Interview Discourse

In a police discourse, whether assisted by an interpreter or not, the interviewing police officer has an institutional power to steer and control its direction, a point also mentioned by Georgina Heydon in her critical discourse analysis of monolingual police interviews, as was already mentioned, *supra*.³²⁶ This has been visually and visibly corroborated in the above turn-taking patterns that have emerged on the ELAN screen. Each cycle always begins with the interviewing police officer who initiates the next question. In an interpreter-assisted interview, an extra turn is added both before and after the suspect's response, and then each cycle is completed, waiting for the start of a next new cycle initiated again by the interviewing police officer.

2. Police Interview Turn-Taking Cycles: Confirmable or Unconfirmable

One of the key questions this thesis has asked is to what extent monolingual participants in a police discourse can assess the accuracy and impartiality of the interpreter. From the standpoint of the police officer, this is done only indirectly by

³²⁶ Heydon, *The Language of Police Interviewing*, 94. Also, see Chapter IX, B-3, and Chapter X, B-1.

listening to the response returned in a four-step question-and-answer cycle, which proceeds in the order of: 1) the police officer's question; 2) the interpreter's translation into Dari; 3) the suspect's response; and 4) the interpreter's translation back into English. The following are examples of this four-step question-and-answer cycle. At this stage, the utterances in Dari are marked as "XXX," as for the English-speaking police officer, they are basically unintelligible. Discourse Clip 1 is an example of a relatively smooth exchange.

Discourse Clip 1: Full 4-Step Q-and-A Cycle

P104:	And what is this for?
ID109:	XXX?
S099:	XXX.
IE075:	For my brain, for my psychotic.

This *Full 4-Step Question-and-Answer Cycle* provides an indirect safeguard, as even if the returned response does not seem to "click" with perfect correspondence, the police officer can still confirm it with the next question, though as to why the returned question did not match the question remains unknown; i.e., the police officer cannot confirm if it was the interpreter's translation problem or the suspect's logicity problem, as in Discourse Clip 2.

Discourse Clip 2: Full 4-Step Q-and-A Cycle

P085:	Do you take this medicine every day?
ID084:	XXX?
S066:	XXX.
IE048:	For the last one year, I've been taking this.

Since the officer's question and the suspect's answer did not quite match, the police officer immediately asked the same question again in Discourse Clip 3, which, this time, received the answer he wanted.

Discourse Clip 3: Full 4-Step Q-and-A Cycle

P086:	Every day?
ID085:	XXX?
S067:	XXX.
IE049:	Yes, every day.

Though troublesome, this “*Full 4-Step Question-and-Answer Cycle*” still provides the questioner with an opportunity to ascertain the probable success or failure of each question-and-answer cycle. Unfortunately, however, not all police interview turn-taking cycles proceed in this pattern. Look at the next three cycle patterns shown in Discourse Clip 4, Discourse Clip 5, and Discourse Clip 6.

Discourse Clip 4: 2-Step Unilateral

P068:	It is his...your right,
ID069:	XXX,
P069:	not to talk to me.
ID070:	XXX.

In Discourse Clip 4, which the author has named “*2-Step Unilateral*,” the suspect does not necessarily have to and thus usually does not respond, so the above two “*2-step Unilateral*” cycles took place back-to-back very quickly, without the officer ascertaining the suspect's understanding of what he has just conveyed to the suspect.

Now let us look at the next “*3-Step Untranslated*,” which actually is a variation of the above “*2-Step Unilateral*.” Again, the Dari utterances are marked “XXX,” so the interviewing officer has no way of finding what is being said. In each of the three successive “*3-Step Untranslated*” exchange in Discourse Clip 5, the second utterance is the interpreter’s translation into Dari, followed by the suspect’s utterance, which, however, does not get translated back to the officer. The officer can only speculate what the suspect has possibly said which the interpreter either thought did not require translation or just missed translating.

Discourse Clip 5: 3-Step Untranslated

P059: ID:062: S:047	but because he..., you were in a police station, XXX, XXX.
P060: ID063: S048:	and you have been arrested, XXX, XXX.
P061: ID064: S049:	for murder, XXX, XXX.

In each of the above three successive cycles, the suspect made an utterance, but the interpreter did not translate it, and the officer also simply moved on without waiting for it to be translated. The only reason this is permissible would be because the nature of the exchange was basically the same as “*2-Step Unilateral*” in Discourse Clip 4, meaning that the suspect did not really have to respond but did so, which neither for the officer nor for the interpreter was very important, and thus went untranslated.

In addition to the above three turn-taking cycle patterns, a fourth pattern,

though not very frequent, has also been observed in this video recording, as is shown in Discourse Clip 6. In this pattern, the suspect interrupts the police officer, so the police officer's utterance, which was to start the next new cycle, simply disappears, never getting translated.

Discourse Clip 6: Officer Interrupted by Suspect

P032:	Some of the... <interrupted by the suspect>
S021:	XXX.
IE014:	I told them I don't know any other language, and I know only Dari. They keep (<i>sic</i>) saying that (<i>sic</i>) Hindi, Hindi. I said, "No, I don't know any Hindi."

D. Ratio of Confirmable, *Full 4-Step Q-and-A Cycle*

Of the total 284 utterances made by the police officer, 27 were simple nodding affirmations or responses to the interpreter's own statements. The thesis has classified the remaining 257 "police-officer-initiated" discourse cycles into the following four patterns as is shown in Table 3.

Table 3: Turn-Taking Cycle Patterns

	Turn-Taking Order	Total number	Ratio (%)
<i>Full 4-Step Q-and-A Cycle</i>	PO-ID-S-IE	178	69.26
<i>3-Step Untranslated</i>	PO-ID-S	17	6.62
<i>2-Step Unilateral</i>	PO-ID	54	21.01
<i>Officer Interrupted by S</i>	PO-S-IE	8	3.11

Needless to say each of these four "basic" pattern categories encompasses a number of variations. For example, a turn-taking cycle in the order of

“PO-ID-S-IE-S-IE,” in which the suspect’s response was made in two separate utterances, each followed by a separate English translation, is categorized as a variation of “*Full 4-Step Q-and-A Cycle*.” Similarly, a more deviated variation like the one in Discourse Clip 7 is still categorized as a variation of “*Full 4-Step Q-and-A Cycle*.”

Discourse Clip 7: “PO-I” Categorized as Full 4-Step Q-and-A Cycle

P159:	Peer Mohammad?
I032:	Yes.

Here, the interpreter happened to answer the officer’s question himself, skipping the in-between “ID-S” part. Still, the officer got a response to his question, and the officer still has the option of asking the same question again just to ascertain that the suspect, not the interpreter, answers it this time with the same response. Therefore, the above “PO-I” in Discourse Clip 7 can be safely categorized as a variation of “*Full 4-Step Q-and-A Cycle*.”

In contrast, a turn-taking sequence “PO-ID-PO-ID-S-IE” is *not* categorized as one “*Full 4-Step Q-and-A Cycle*.” It must be divided into: “*2-Step Unilateral*” (PO-ID), and “*Full 4-Step Q-and-A Cycle*” (PO-ID-S-IE), as is shown in Discourse Clip 8.

Discourse Clip 8: “PO-ID-PO-ID-S-IE” as 2-Step Unilateral and Full 4-Step Q-and-A

P238:	Today,
ID259:	<i>Today,</i>
P239:	did you go out?
ID260:	<i>did you go out?</i>
S288:	<i>From where?</i>
IE249:	From where?

The criteria for such pattern categorization are all based on whether or not the police officer has a way of ascertaining successful communication of his message to the suspect by listening to the translated response that is returned to him *before making his next utterance that starts a new cycle*. In Discourse Clip 8, although P238 (“Today,”) and P239 (“did you go out?”) were originally one sentence, by dividing it into two and letting the interpreter translate the first part before continuing the rest of the sentence, the officer has become unable to ascertain if his first utterance was successfully communicated before making his next utterance. The following Discourse Clip 9 shows a similar example, in which the first three cycles are “2-Step Unilateral” and only the last one becomes a “Full 4-Step Q-and-A.”

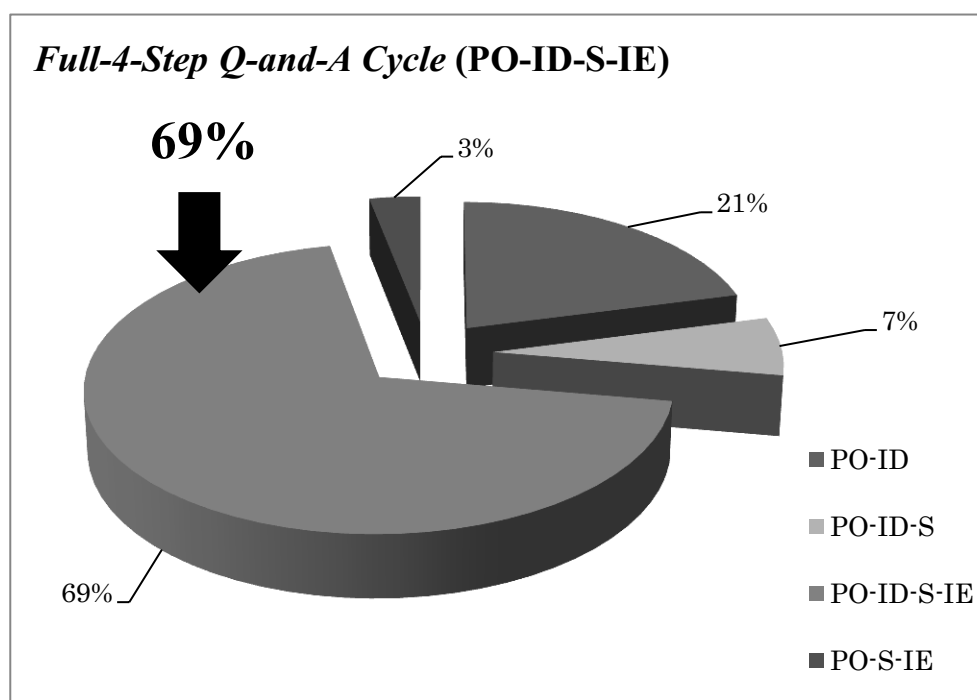
Discourse Clip 9: “PO-ID-PO-ID-PO-ID-S-IE”

P070:	But the highest court in our country,
ID071:	<i>But the court in our country,</i>
P071:	the Supreme Court of Canada,
ID072:	<i>the Supreme Court of Canada, the highest court in Canada,</i>
P072:	tells me, as the investigator,
ID073:	<i>tells me,</i>
P073:	that I can ask you any question that I believe is relative.
ID074:	<i>that I have a right to ask any questions that are related to this incident.</i>
S053:	<i>If my lawyer tells me to talk, I will talk.</i>
IE038:	If my lawyer allows me to say or talk, I will do that.

The data in Table 3 has been projected into the following Chart 7. As the chart indicates, the ratio of the confirmable, *Full 4-Step Q-and-A Cycle* constitutes the largest percentage of the total, 69.26%, which seems to indicate that in nearly 7 out of every 10 exchanges, the police officer had a means to confirm if the communication was

successful or not. At the same time, however, the figures also indicate that in nearly 30% of all the exchanges, the best the police officer could do was just to assume or trust that his message was properly communicated to the suspect by the interpreter who was sent by a private company which had a business contract with the Toronto Police.

Chart 7: Ratio of Confirmable, Full 4-Step Q-and-A Cycle



1. Pragmatic Functions of Each Cycle Pattern

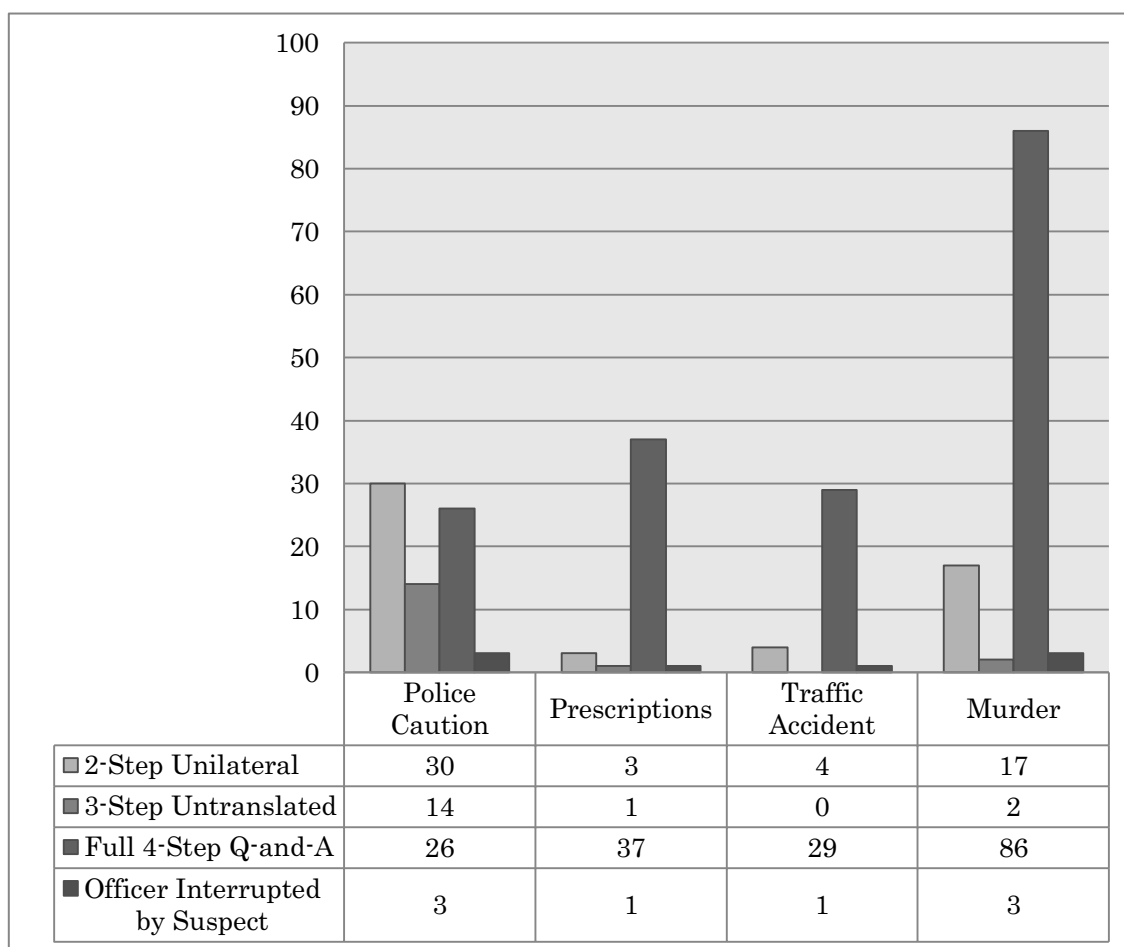
The *Full 4-Step Q-and-A Cycle* exchanges are usually: information-gathering questions (*yes/no* questions and *wh*-questions) and challenges (confrontations or leading questions), whereas both *3-Step Untranslated* and *2-Step Unilateral* are generally: commands, notifications, confirmations, and affirmations, which do not always require responses.

2. Pragmatic Functions by Scenes

In Table 1, *supra*, the thesis showed that this interview was divided into four scenes: 1) police caution, 2) prescriptions, 3) traffic accident, and 4) murder. As is shown in Chart 8 below, *2-Step Unilateral* and *3-Step Untranslated* patterns appear predominantly in the first “police caution” scene, in which the police officer’s institutional duty is to “notify” the suspect of his rights, though with an LEP suspect, ensuring his understanding through the interpreter was not easy, which is why it took as much as 17.37 minutes.

In contrast, *Full 4-Step-Q-and-A Cycle* pattern appears primarily in the fourth “murder interrogation” scene, the most critical of all the four scenes, in which 86 out of the total 108 (17+2+86+3) cycles, or about 79.6% of all the exchange cycles in this murder interrogation scene were in the *Full 4-Step-Q-and-A Cycle* pattern. This, however, is only natural as the one and the only goal of this fourth, “murder interrogation” scene was to obtain the suspect’s voluntary confession about the murder that he had allegedly committed, by asking a number of leading and confrontational questions one after another.

Chart 8: Turn-Taking Cycle Patterns by Four Interview Scenes



E. Monolingual Extra Round-Trips within Each Cycle

In Chapter XI (this chapter), B-2, *supra*, this thesis mentioned that the inter-lingual discrepancy in the total number of utterances with each language pair strongly suggests the occurrence of extra round-trips conducted between the interpreter and one of the two parties in only one language. This, of course, is against the code of ethics, and such behavior can very quickly spawn seeds of distrust on the excluded party.

In a real job, however, the interpreter must also confirm or clarify any ambiguities with each speaker's statement before rendering its translation. Therefore,

asking such clarification questions is inevitable as well as essential. The question is “how” this is done, so the interpreter does not lose the parties’ trust. The most commonly employed manner is to “excuse oneself” or “quickly explain” why this needs to be asked, immediately before or after this verbal act

The difficulty in assessing the appropriateness of the interpreter’s behavior in this respect resides in the fact that only those who know both languages perfectly can understand what kind of information was actually exchanged. In this research, too, the author of the thesis was completely excluded from all the Dari exchanges in the recording until all of them were “translated” by the “check interpreter.” Till then, the only thing monolingual English speakers or audience could possibly do is to simply just guess what they may be saying.

These extra round-trips can range from a relatively simple one extra round-trip like the one in Discourse Clip 10-1 to a more complex, consecutive multiple (e.g. double or triple) extra round-trips as is shown in Discourse Clip 11-1 or often a combination of several of them interspersed in one discourse cycle like Discourse Clip 12-1. In these discourse clips below, the utterances in Dari are shown as “XXX,” as for monolingual English speakers they remain unintelligible until they are check-translated back into English.

Discourse Clip 10-1: One Extra Round-Trip

P215:	<looking at the suspect> So he gets angry?
ID233:	XXX?
S264:	XXX?
ID234:	XXX?
S265:	XXX.
IE228:	I just can't think.

Discourse Clip 11-1: Two Consecutive Extra Round-Trips

P183:	My officers tell me that you ate earlier.
ID199:	XXX.
S224:	XXX.
ID200:	XXX?
S225:	XXX.
ID201:	XXX?
S226:	XXX.
IE192:	At 2:00 p.m., or two o'clock p.m., they brought something in the paper. I eat that. I ate that.

Discourse Clip 12-1: Several Interspersed Extra Round-Trips

P051:	"retain" means to "hire a lawyer."
ID052:	XXX.
S036:	XXX.
I002:	<to the police officer> Excuse me,
P052:	Yes?
I003:	I don't want to...
ID053:	XXX?
S037:	XXX.
IE029:	Earlier, you said that tomorrow when we go to the court,
ID054:	"OK," <to the suspect> XXX,
S038:	<leaning towards the interpreter, as if to ensure his understanding> XXX.
IE030:	there would be a lawyer present, and also a person who could (<i>sic</i>) interpret, who could (<i>sic</i>) know my language, would be present tomorrow.

In all of the above three examples, each discourse cycle that started with the police officer's utterance does get completed at the end with the interpreter's translation into English. The problem with these extra round-trips, however, is that it always feels that there has been "a lot more" than what was finally translated in English. To warrant such "wary feelings," this thesis has measured the actual "time discrepancy" shown in Discourse Clip 11-2.

Discourse Clip 11-2: Two Consecutive Extra Round-Trips (Time Discrepancy Measured)

P183:	My officers tell me that you ate earlier.
ID199:	XXX.
S224:	XXX.
ID200:	XXX?
S225:	XXX.
ID201:	XXX?
S226:	XXX. (Total time spent for all of these six "XXX"s: 36.418 seconds)
IE192:	At 2:00 p.m., or two o'clock p.m., they brought something in the paper. I eat that. I ate that. (IE192 Rendition Time: 7.474 seconds)

As Discourse Clip 11-2 above shows, this "lot more" actually lasted for 36.418 seconds while the final English translation was only 7.474 seconds, just about 1/5 of what has been exchanged in Dari, requiring a lot of patience on the officer.³²⁷ Ideally, such extra round-trips should never take place, and court interpreters' code of ethics also prohibits, in principle, such verbal behavior. Even for the purpose of clarification, the basic rule is that the interpreter should let the parties do the figuring out, instead of doing

³²⁷ As was mentioned in Chapter XI (this chapter), B-3, *supra* as well as in fnn. 321 and 322, this time discrepancy between the original utterance and the rendered translation, e.g., the former having been 5 times longer than what the interpreter finally rendered in translation is a very common source of frustration and suspicion on the excluded party.

it on one's own.

In actual interpreting work, however, such extra round-trips inevitably pop up, usually “meant well” as a “quick” confirmation or clarification to better facilitate the communication. What an interpreter can do in such cases, as a courtesy to the excluded party, is to give a quick “excuse” or “explanation” before or after such round-trips to gain the excluded party's patience, just as this interpreter did in Discourse Clips 13-1 and 13-2 below.

Discourse Clip 13-1: Extra Round-Trips with an Advance Excuse

P0180:	Because of something that happened at your home.
ID195:	XXX.
S219:	<looking down very uncomfortably for a moment, moving his legs slightly> XXX.
IE187:	I don't know the..., the...incident. All I said is, come on, come here, come on in, that is er...,
I037:	<to the police officer> Excuse me,
ID196:	<to the suspect> XXX?
S220:	XXX.
IE188:	Come on in and watch, see what happened, or what was the matter.

Discourse Clip 13-2: Extra Round-Trips with an Explanation at the End

P096:	And what happens if you don't take your stomach medication?
ID097:	XXX?
S082:	XXX.
ID200:	XXX?
S225:	XXX.
ID201:	XXX.
S084:	XXX.
I013:	Just on a correction, I asked what's the word “ <i>nafgh bad</i> ,” so he explained “gas.”

S085:	<i>Gas.</i>
IE061:	If I don't take that, gas will be produced,
P097:	Yes.

1. Extra Round-Trips in Dari

Of the total 258 exchange cycles initiated by the police officer, 27 cycles, or 10.5% of them, contained one or more extra round-trip exchanges between the interpreter and the suspect. Table 4 below shows the breakdown by the four scenes.

Some cycles contained more than one of such round-trips, so the total number of extra “round trips” became 36. Out of this total 36 round trips, 19 of them were “one extra round-trip” without excuse; 5 of them were “one extra round-trip” with excuse; 7 of them were “two consecutive extra round-trips” without excuse; 3 of them were “two consecutive extra round-trips” with excuse; and the remaining 2 were “three or more consecutive extra round-trips” with excuse. Cycles containing separate (interspersed), multiple round-trips are marked as “1+/cycle,” and each cycle is shown in a separate row with all the included round-trips, right beneath the top row of each scene, below each broken line.

As is clear from the Table 4 below, out of the total 36 extra round trips, 10 round trips (5+3+2) were accompanied by an excuse or explanation by the interpreter, such as “Excuse me,” or “Excuse me, I have to go back again,” while the remaining 26 (19+7) did not..

Although the total of 26 extra round-trips without an excuse or explanation is a slight deviation from the most strictly interpreted code of ethics, in both of the 2 “three or more consecutive round-trips” and in 4 out of 5 (1+1+3) “cycles with separate, multiple round-trips,” the interpreter did provide an excuse or explanation.

Table 4: Extra Round Trips in Dari with or without Excuse or Explanation Given

Scenes	1 (Con-secutive) Rnd/ cycle	1 Rnd	1 Rnd	2 Rnds	2 Rnds	3+ Rnds	3+ Rnds	Total Cycles w/Round Trips	
	1+ (Sep- arate, Multiple Rnds/ cycle								
Excuse/ Explanation		with- out	with	with- out	with	with- out	with		
Police caution	1/cycle	2						3	4
	1+/cycle	1	1					1	
Pre- scrip- tions	1/cycle	1	1	4	1			7	8
	1+/cycle	1			1			1	
Car Acci- dent	1/cycle	1	1					2	5
	1+/cycle	3					1	3	
	1+/cycle	3							
	1+/cycle	3					1		
Murder	1/cycle	4	2	3	1			10	10
	1+/cycle							0	
Total Round Trips		19	5	7	3	0	2	27/258 Cycles 36 Total	

Also, the largest number took place during the fourth “murder interrogation” scene with a total of 10 cycles containing either one extra or two consecutive extra round-trips, which, if these round trips were made to clarify or confirm the suspect’s

statements, may mean that the interpreter was being extra cautious about not mistranslating anything, which could only be verified with the help of a “check interpreter,” as will be shown in the next chapter.

Before ending this chapter, however, let us look at one more important point concerning these extra monolingual round-trips. For English-speaking parties and fact-triers, these extra round-trips in recorded police interviews usually stand out conspicuously as they are given in a foreign language (and thus unintelligible). What tends to be forgotten is that the same is also happening to the suspect during the same interview whenever the interviewing police officer and the interpreter conduct a verbal exchange in English that does not get translated into the suspect’s language.

2. Extra Round-Trips in English

Let us, therefore, look at the same “extra round-trip” issue from the suspect’s standpoint. In this particular interview, too, such exchanges, or “extra round-trips in English,” did take place, as shown below in Table 5.

Table 5: Extra Round Trips in English with or without Excuse or Explanation Given

		Extra Round Trips		Total
Excuse/Explanation		without	with	
Scenes	police caution	3	0	3
	prescriptions	4	1	5
	car accident	1	1	2
	murder	2	1	3
TOTAL		10	3	13

For English-speakers, extra round trips that take place in English may not seem as disturbing or even noticeable as those that take place in an unintelligible foreign language, but as is shown above, a total of 13 extra round-trips took place in English, out of which only 3 were accompanied by an excuse (e.g. “Excuse me”) or an apology (e.g. “I’m sorry”).

Just to get a feel of what this may sound like, let us first look at the following Discourse Clips 14-1 and 14-2 below.

Discourse Clip 14-1: Extra Round-Trips in English Excluding the Suspect

S171:	XXX.
IE140:	After they took me to the hospital, at one o’clock, they give me...
I027:	Er..., something like glucose, glucose “liquidicadance” (<i>sic</i>), so it’s...what’s that called...er...
P141:	What does he call?
I028:	“Serum.” <<The suspect also repeats the word “serum” in the background.>>
P142:	Yeah, that’s fine.
I209:	Yes, “serum”..., <finally remembering> intravenous!
IE141:	So, they gave me the intravenous.

The above exchange may not sound particularly disturbing to English-speaking audience who listen to this recording, as except for the first utterance by S171, which was immediately translated into English, the entire exchange that followed is in English and clearly shows what the problem was. If, however, the situation was the other way round, the entire discourse in the suspect’s shoes would sound like Discourse Clip 14-2. The English utterances, which the suspect does not understand, are marked as “XXX.”

Discourse Clip 14-2: English Extra Round-Trips Switched to Dari

S171:	<i>After that, they gave me a “serum” and after that nothing else.</i>
IE140:	XXX.
I027:	XXX..., XXX...XXX...XXX...
P141:	XXX?
I028:	“Serum.” <<The suspect also repeats the word “serum” in the background.>>
P142:	XXX.
I209:	XXX, “serum”..., XXX!
IE141:	XXX.

Watching the video, English-speaking fact-triers might notice that in Discourse Clip 14-1, when the interpreter was thinking aloud, responding to the police officer in Line I028, saying “*Serum*,” the suspect kept looking back and forth at both the police officer and the interpreter, listening intently to get a hint as to what was being exchanged, and repeated the Dari word “*serum*” in the background, gesturing also with his hands a shape of an intravenous drip bottle in an effort to help his interpreter.

Having to resort to such a gesture simply shows the enormous language barrier an LEP suspect regularly undergoes, and for this particular suspect, this interpreter who finally arrived past midnight was the only means of communication with those who would be indicting him for murder. He would do all he could to ensure that this interpreter translated everything accurately, though he could only do this indirectly or even non-verbally.

F. Summary

This chapter presented forensic linguistic research results and analyses of the Dari-interpreter-assisted Toronto Police interview from interview participants’

standpoint. The main question here was to what extent and how these monolingual participants can assess “accuracy” and “impartiality” of the interpreter’s translation through indirect means.

The discrepancy in the total number of utterances (PO: 284, ID: 305, S: 346, IE: 304, I: 44) immediately implied the existence of monolingual extra round-trips. By a simple calculation, such extra round-trips in Dari appeared in 10.5% or 27 out of the total 257 discourse cycles initiated by the police officer. Out of 27, only 10 were accompanied by an excuse or explanation. As for extra round-trips in English, there were 13 such exchanges, out of which only 3 were accompanied by similar signals.

As one way for the police officer to assess successful communication, the thesis analyzed 4 turn-taking cycle patterns, each starting with the police officer: *2-Step Unilateral* (PO-ID); *3-Step Untranslated* (PO-ID-S); *Full 4-Step Q-and-A Cycle* (PO-ID-S-IE); and *Officer Interrupted by Suspect* (PO-S-IE). Of these 4 patterns, the only one that permits a chance for the officer to confirm successful communication is *Full 4-Step Q-and-A Cycle* (PO-ID-S-IE), which accounted for 69.26% of the total 257 cycles.

Two other factors that may help the participants to even indirectly assess the interpreter’s competence are: pause time (how quickly the translation arrives following the source-language utterance) and time correlation between the source-language utterance and its translation in the target language in each translation pair. Regarding the pause time, the interpreter for this particular interview demonstrated an extremely high proficiency of an average 0.5 second pause time from English to Dari and 0.428 second pause time from Dari into English.

As for the source-language and target-language translation pair time correlation,

the result also showed a very high correlation between the officer's English utterance and the interpreter's translation into Dari ($R=0.81$) and moderately high correlation between the suspect's Dari utterance and the interpreter's translation into English ($R=0.67$).

Though the results so far do not seem to contradict the fact that this is a police interview interpreting performance that perfectly satisfied the "conduit" standards of the then Ontario Superior Court of Justice, these are only as far as "indirect means" can go in terms of "conduit verification." Anything more, anything further that can truly convince (or dissuade) the fact-triers requires a check interpreter's authenticated translation of the entire interview

Chapter XII

Results and Analyses 2: Expert Witness's Standpoint

In Chapter XI, the thesis tried to present facts and their analyses from the monolingual participants' standpoint, who can only indirectly assess the interpreter's accuracy and impartiality from the limited available clues. This chapter will shift the standpoint to that of an expert witness, who is able to: 1) verify the accuracy of the interview interpreter's translation, 2) fill in all the missing information that had taken place in the foreign language, and 3) assess the general credibility or reliability of the interpreter.

A. Impartiality Issue 1: Footing Shifts

In Section E of the previous chapter (Chapter XI), we saw how "monolingual" extra round-trips can start spawning distrust on the excluded party. Such behavior of the interpreter is not just annoying from an excluded party's subjective viewpoint. From an objective standpoint, too, it could be regarded as a sign of partiality.

1. Interpreter's Footing Shifts in English

In all of the extra "round-trips" between the interpreter and the police officer shown in Table 5 in Chapter XI, E-2, the interpreter was making statements in English which were *not* translations of the suspect's statements made in Dari. In other words, the interpreter was making his own statements, expressing his ideas. The code of ethics strictly limits such behavior only to absolutely necessary situations, e.g., to clarify

an ambiguity that may lead to a mistranslation.

In this recording, the interpreter made a total of 44 statements of his own in English to communicate with the police officer. In such situations, the interpreter is making a so-called “footing shift,” taking on a different role from the most strictly defined “conduit” role. Using Goffman’s terminology, the interpreter is becoming either a “principal” or even an “author,” instead of remaining in the prescribed “animator” role.³²⁸

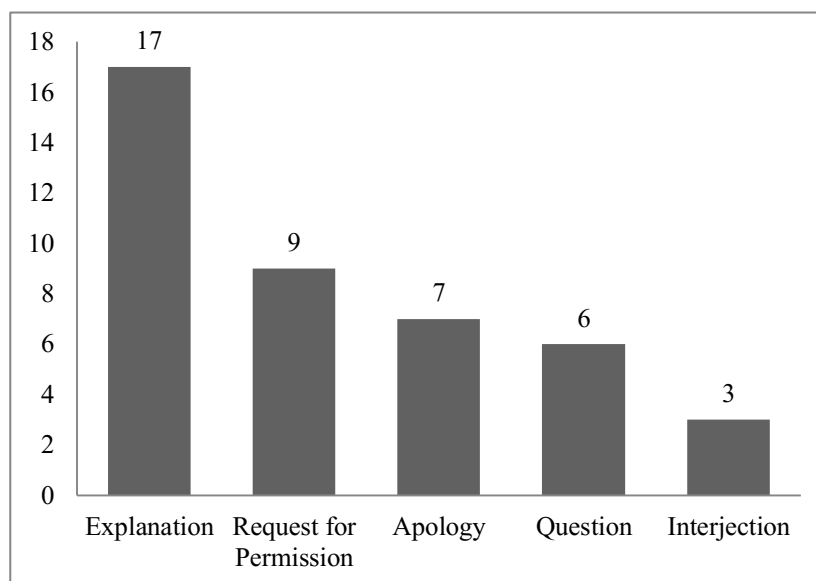
The thesis already noted one study on “interpreter-mediated police interviews” conducted by Nakane, who used Goffman’s analytical tool,³²⁹ in which she stated that interpreters in police interviews should always remain in the “animator” role; that while the “principal” role is often observed in making “repairs,” ideally such repairs should also be made within the role of an “animator”; and that while the “author” role clearly deviates from the “code of ethics,” interpreters also shift to this role to supply what they judge to be critical cultural information to prevent miscommunication or to ensure effective communication.

With these existing studies’ observations in mind, the author of this thesis also conducted a similar analysis on this interpreter’s roles shifts. Out of 44 total statements, 42 were in the “principal” category, and only 2 were in the “author” category. First, let us look at Chart 9 below, which shows the breakdown of “principal” category based on their pragmatic functions.

³²⁸ See Chapter IX, B-2, *supra*, for Goffman’s theory on “animator,” principal,” and “author.”

³²⁹ See Chapter IX, D-4, and fnn. 290, 291, *supra*.

Chart 9: Breakdown of 42 “Principal” Role Utterances



The two largest numbers were found in “explanation,” typically to explain about the aforementioned “extra round-trips” afterwards, and in obtaining “permission” before making such extra round-trips, as in the following two examples, Discourse Clip 15 and Discourse Clip 16.

Discourse Clip 15: “Principal” Role to Explain

P096:	And what happens if you don't take your stomach medication?
ID097:	<i>What happens if you don't take your stomach medicine?</i>
S082:	<i>I will get “nafgh bad.”</i>
ID098:	<i>What is “nafgh bad”?</i>
S083:	<i>“Nafgh bad” is “gaaz (gas).”</i>
ID099:	<i>Ah...</i>
S084:	<i>“Nafgh bad (gas)” is produced and it hurts my stomach, and it also comes to my head [to cause a headache].</i>
I013:	Just on a correction, I asked what's the word “nafgh bad,” so he explained “gas.”

Here, after the two extra round-trips in Dari, which were necessary for the interpreter to confirm the meaning of “*nafgh bad*,” a rather old Dari word to refer to the “bloating of a stomach caused by gas,” the interpreter quickly explained to the police officer what kind of exchange had taken place in Dari. In the next, Discourse Clip 16, the interpreter excuses himself in advance before making similar extra round-trips for a clarification purpose.

Discourse Clip 16: “Principal” Role to Request Permission

P196: ID212:	You told the, you told the operator, through the interpreter, <i>You told the operator through the interpreter,</i>
P197: ID213:	that you spoke Hindi. <i>that you spoke Hindi.</i>
S237:	<making a long statement> <i>I only told him, “You come.” I know just a little Hindi only. If I knew Hindi, why would I be here all night? If I did, why would I ask for a lawyer? < to the interpreter> If I knew Hindi, why would you be here, why would I be relying on you now?</i>
IE202:	I told him to...er,
I038:	<to the police officer> Excuse me, I have to go back again.
P198:	Please.
ID214:	<i>I’m sorry.</i>
S238:	<i>Yes.</i>
ID215:	<i>What I understood was..., <interrupted by the suspect></i>
S239:	<i>I said if I knew Hindi,</i>
IE203:	If I knew Hindi properly,
S240:	<i>I would have said everything I wanted to say.</i>
IE204:	I would have said, I would have told them all of everything.

In scene 4 (Murder Interrogation), the exchange became more intense, and the suspect often bumbled away a lot of things in one chunk. In a more traditional, conference-style consecutive interpreting, this would be nothing unusual. A speaker

often talks for a relatively long while, during which an interpreter takes notes, and when the speaker finally pauses, the interpreter translates everything in an equivalent detail.

In contrast, police interview interpreting or cross-examination interpreting, which is a “dialogue-style” discourse and not a speech, is almost always conducted in a much shorter-span, “sentence-by-sentence” turn-taking style.³³⁰ For this reason, many interpreters just keep translating without taking notes. Therefore, there is an unwritten understanding among the participants that they must pause for the interpreter before their sentences become very long. However, when the participants become engrossed, like the suspect here, they start babbling many sentences in one shot. The interpreter here needed to sort things out before translating, so he asked for permission from the interviewing police officer before doing it.

All the other “explanation” and “request for permission” statements were like the examples shown above. Seven “Apology” statements were made when the interpreter became a little stuck in coming up with the right translation, and 6 “Question” utterances were made to clarify the meaning of the police officer’s statements, 3 of them appeared during the first “Police Caution” scene, which will be discussed in Chapter XII (this chapter), E-1 , *infra*.

How about the “author” role? The research identified 2 statements used in this “author” role, as shown in Discourse Clip 17.

Discourse Clip 17: “Author” Role to Provide Cultural Information

P114:	And what else happens?
ID122:	<i>What happens after that?</i>

³³⁰ In the field of interpreting studies, this dialogue-style interpreting is often referred to as “liaison interpreting,” “community interpreting,” or “escort interpreting.”

S112:	<i>After that, I drink “doogh,” and if I can sleep, I sleep. If I can’t sleep, I don’t sleep.</i>
IE089:	Then I just make a glass of a...
I018:	It’s a kind of drink called “doogh.” It’s made of yogurt. So just put water in, and shake it to mix it together.
P115:	Yes.
I019:	That’s called “doogh.”
IE090:	So I just make one of that and eat, drink it.

This was in the second, “Prescriptions” scene, in which the suspect was explaining several prescriptions that he had been taking. Here, the most important one for the interviewing police officer was the one for his “head (or brain),” perhaps because this could be a potential “insanity defense.” The suspect kept saying that his stomach problem affected his “thinking,” for which he was getting a prescription from a doctor who travelled to India twice a year.³³¹

Not getting much more than this, the officer asked what kind of symptoms appeared if he did not take this medicine, and the suspect explained what he normally did to mitigate the symptoms that appeared. “Doogh,” according to the “check-interpreter” for this research, is a very common, traditional yogurt-flavor drink for people in Afghanistan, but for those who were unfamiliar, a quick cultural note like this may be justified for the purpose of saving additional complicated exchanges between the officer and the suspect.

The above Line I018 and Line I019 were the only two “author” role statements made by the interpreter. Along with the 42 “principal” role statements, therefore, it would be fair to say that all of these “English-language footing shifts” were made for

³³¹ See the suspect’s utterances (S103-S107) in the Complete Annotated Transcript in Appendix 1.

justifiable reasons.

2. Interpreter's Footing Shifts in Dari

Similar footing shifts in Dari are impossible to identify for the English-speaking police officer and English-speaking fact-triers, unless they are provided with a complete "check translation," without which they can only guess about the potential footing shifts by the interpreter in all the extra round-trips made in Dari.

Table 4 in Chapter XI, E-1, *supra*, showed a total of 36 such extra round-trips in Dari, only 10 of which were accompanied by an excuse or an explanation. With or without an excuse or explanation, a monolingual round-trip exchange in Dari means that the interpreter is talking directly with the suspect, confirming, clarifying, or asking for information, instead of letting the police officer do such confirmation or clarification work himself.

Also, in Chapter XI, B-1, *supra*, it was shown that the police officer made a total of 284 utterances, while the interpreter made 305 utterances in Dari. In the first paragraph of Chapter XI, D, *supra*, the thesis stated that out of those 284 utterances made by the police officer, 27 were simple nods and responses to the interpreter's own statements made in English.³³² Therefore, by a simple calculation of "305-(284-27)=48," we can immediately guess that at least those extra 48 utterances in Dari made by the interpreter were "direct exchanges" with the suspect, perhaps for the purpose of confirmation or clarification. Without a complete "check translation," however, we have no way of finding out what was actually said in what kind of manner.

These speculations, which again can easily lead to suspicion and misgivings,

³³² See the first sentence in Chapter XI-D, *supra*.

can only be transformed into objectively confirmed facts, only by the check-interpreter's translation. For instance, let us look at the following Discourse Clip 18-1.

Discourse Clip 18-1: Interpreter's Direct Talk with Suspect: Before "Check Translation"

I025:	I have to ask him because I don't want to...say...something wrong...,
P140:	Please.
I026:	To the best of my ability..,
ID154:	<to the suspect, touching his char's armrest> XXX, ...
S168:	XXX?
ID155:	XXX?
S169:	XXX.
ID156:	Er, XXX?
S170:	XXX.
ID157:	"OK," XXX?
S171:	XXX.
IE140:	After they took me to the hospital, at one o'clock, they give (<i>sic</i>) me...

Clearly, the interpreter is talking to the suspect directly, asking some important questions, making a clear role shift and becoming a direct, "visible" participant. If a discourse like this was left uncovered with as many as four consecutive extra round-trips in a foreign language (in Dari in this case), the general impression on the part of the linguistically excluded may remain negative. However, what if this section is verified as follows?

Discourse Clip 18-2: Interpreter's Direct Talk with Suspect: After "Check Translation"

I025:	I have to ask him because I don't want to...say...something wrong...,
P140:	Please.
I026:	To the best of my ability..,
ID154:	<to the suspect, touching his char's armrest> <i>Excuse me</i> , ...

S168:	<i>“Baleh (Yes).”</i>
ID155:	<i>Could you... speak in short sentences one by one, so I won't mistranslate what you say or add something you didn't say?</i>
S169:	<i>Sure, sure, I understand.</i>
ID156:	<i>Er, they took you to the hospital around one o'clock in the morning. After that?</i>
S170:	<i>They took me to the hospital around one o'clock.</i>
ID157:	<i>“OK,” After that?</i>
S171:	<i>After that, they gave me a “serum” and after that nothing else.</i>
IE140:	<i>After they took me to the hospital, at one o'clock, they give (sic) me...</i>

Suddenly, the impression of the interpreter improves dramatically into someone trying to fulfill his mission to the best of his ability as sincerely as possible. The interpreter's footing did shift, speaking in a manner that is not very desirable. However, access to an authenticated “check translation” can also dispel otherwise unnecessary distrust.

The three Discourse Clips we saw in Chapter XI, E, *supra*, as examples of such monolingual extra round-trips in Dari, can also be verified as follows only with a check translation as are shown below: “Discourse Clip 10-1: One Extra Round-Trip” and “Discourse Clip 10-2: Verified One Extra Round-Trip”; “Discourse Clip 11-1: Two Consecutive Extra Round-Trips” and “Discourse Clip 11-3: Verified Two Consecutive Extra Round-Trips”; and “Discourse Clip 12-1: Several Interspersed Extra Round-Trips” and “Discourse Clip 12-2: Verified Several Interspersed Extra Round-Trips.”

Discourse Clip 10-1: One Extra Round-Trip

P215:	<looking at the suspect> So he gets angry?
ID233:	XXX?
S264:	XXX?
ID234:	XXX?
S265:	XXX.
IE228:	I just can't think.

Discourse Clip 10-2: Verified One Extra Round-Trip

P215:	<looking at the suspect> So he gets angry?
ID233:	<i>Then you get angry?</i>
S264:	<i>What?</i>
ID234:	<i>Then you get angry?</i>
S265:	<i>My "fekar (thinking)" gets bad.</i>
IE228:	I just can't think.

Discourse Clip 11-1: Two Consecutive Extra Round-Trips

P183:	My officers tell me that you ate earlier.
ID199:	XXX.
S224:	XXX.
ID200:	XXX?
S225:	XXX.
ID201:	XXX?
S226:	XXX.
IE192:	At 2:00 p.m., or two o'clock p.m., they brought something in the paper. I eat that. I ate that.

Discourse Clip 11-3: Verified Two Consecutive Extra Round-Trips

P183:	My officers tell me that you ate earlier.
ID199:	<i>My officers told me that you ate earlier.</i>
S224:	<i>At around two or three o'clock, they brought me a small bun of this size and a glass of juice.</i>

ID200:	<i>Two in the morning or two in the afternoon?</i>
S225:	<i>In the morning, morning.</i>
ID201:	<i>What time did you eat supper? What did they bring?</i>
S226:	<i>Three or three-thirty or four. I didn't have a watch at that time. I ate two slices of bread wrapped in paper. I don't know what was inside.</i>
IE192:	<i>At 2:00 p.m., or two o'clock p.m., they brought something in the paper. I eat that. I ate that.</i>

Discourse Clip 12-1: Several Interspersed Extra Round-Trips

P051:	"retain" means to "hire a lawyer."
ID052:	XXX.
S036:	XXX.
I002:	<to the police officer> Excuse me,
P052:	Yes?
I003:	I don't want to...,
ID053:	XXX?
S037:	XXX.
IE029:	Earlier, you said that tomorrow when we go to the court,
ID054:	"OK," <to the suspect> XXX,
S038:	<leaning towards the interpreter, as if to ensure his understanding> XXX.
IE030:	there would be a lawyer present, and also a person who could (<i>sic</i>) interpret, who could (<i>sic</i>) know my language, would be present tomorrow.

Discourse Clip 12-2: Verified Several Interspersed Extra Round-Trips

P051:	"retain" means to "hire a lawyer."
ID052:	<i>"Retain," to get a lawyer means you hire a lawyer.</i>
S036:	<i>To hire a lawyer, you told me earlier, means that a lawyer will come. I'm not very literate. A Dari interpreter will also come. The Dari interpreter will ask me questions, and I will respond, and the interpreter will tell this to the lawyer.</i>
I002:	<to the police officer> Excuse me,
P052:	Yes?
I003:	I don't want to...,

ID053:	<to the suspect> <i>Could you repeat from the beginning?</i>
S037:	<i>Already, before this interview, you came, and my lawyer also came. I'm not very literate, ...</i>
IE029:	Earlier, you said that tomorrow when we go to the court,
ID054:	"OK," <to the suspect> <i>When we go to the court,</i>
S038:	<leaning towards the interpreter, as if to ensure his understanding> <i>Earlier you told me that when we go to the court tomorrow, a lawyer will come, and a person who understands my language, the Dari language, will also come.</i>
IE030:	there would be a lawyer present, and also a person who could (<i>sic</i>) interpret, who could (<i>sic</i>) know my language, would be present tomorrow.

Only with these verified "check-translations" prepared by an expert witness who authenticated these translations, the triers of fact can, for the first time, begin to determine the "reliability" (accuracy and impartiality) of the interpreter's translation. Before discussing these "accuracy" issues, let us look at one more important point concerning "impartiality" issue.

B. Impartiality Issue 2: Use of Pronouns

In an interpreter-assisted discourse, changes in the "use of pronouns" often reveal subtle role shifts and power shifts, which provide indirect clues to assess "impartiality." Let us, therefore, examine the participants' pronoun use in detail.

In Chapter IV, B-1, *supra*, the thesis noted that an interpreter who abides by the code of ethics must address himself or herself as "the interpreter," not by the pronoun "I," as "I" is used to denote the original speakers.³³³ The interpreter in this police interview abided by this rule faithfully, as can be seen in Discourse Clip 19.

³³³ As was noted in fn. 129, this first person, singular pronoun "I," is referred to as "the alien I."

Discourse Clip 19: Interpreter Addressing Himself as “The Interpreter”

P045:	The officer told you you have the right to retain and instruct counsel.
ID045:	<i>The officer told you that you have a right to have a lawyer,</i>
S031:	<i>“Baleh (Yes).”</i>
ID046:	<i>to consult him.</i>
S032:	<i>Yes, he said, and...</i>
IE025:	Yes, yes, he said that.
S033:	<continuing> <i>Already, before this interview, you came, and I talked with my lawyer.</i>
IE026:	Yes, when my lawyer spoke to me, when you, he’s pointing to the interpreter, when you came in, and he talked to me.

In this Discourse Clip 19, notice that the suspect in Line S033 uses “you” to directly address the “interpreter,” not the “police officer.”³³⁴ However, the interpreter is not allowed to change this “you” to “me,” as doing so is against the rule. Still, if he uses the word “you,” the police officer may think it refers to him. Therefore, the interpreter phrased it as “you, he’s pointing to the interpreter.”

Now, let us look at other pronouns. In English, the interpreter addressed the suspect as “he” only 3 times, and they were not in translations but on the three occasions when he stepped aside into the “principal” role talking to the police officer (I006, I022, and I025).³³⁵ In contrast, the police officer used “he” to refer to the suspect 21 times throughout the whole interview. Such pronoun use reveals a “subtle power shift” in the interview room, which subconsciously influences the psychology of the participants, which will be discussed below. The following Table 6 shows the breakdown of such

³³⁴ Such pronoun use confusion is very common, especially among those who are not used to using an interpreter and thus not used to treating the interpreter as an “invisible” person who should not be addressed directly as “you.” “You” must always refer to the other party, not to the interpreter.

³³⁵ See the Complete Annotated Transcript in Appendix 1.

“undesirable use of pronouns” by speakers in each scene, from which we can make important inferences.

Table 6: Use of “Third Person” (Indirect Speech) and Suspect’s Using “You” for Interpreter

Scenes	Police Officer	Interpreter (English)	Interpreter (Dari)	Suspect
	“he” for “suspect”	“he” for “suspect”	“he” for “officer”	“you” for “interpreter”
Police Caution	12	1	0	8
Prescriptions	3	0	1	0
Traffic Accident	1	2	0	1
Murder	5	0	7	7
	21	3	8	16

1. Police Officer’s Use of “He”

The police officer used “he” to refer to the “suspect” 12 times during the first 17:37 minutes of “Police Caution,” examples of which are shown in Discourse Clip 20.

Discourse Clip 20: Police Officer Using “He” for the Suspect

P007:	I know that he spoke to a lawyer, and I..., that is a private conversation, and not something that I want to discuss with him at this point.
P010:	that he has had a conversation with his lawyer.
P011:	It is his right,
P014:	Does he understand this?
P016:	Just so he knows that I’m a policeman.
P020:	As I said before, it is his right not to answer my questions.
P046:	And does he understand what that means?
P057:	“To instruct” means that it is his right to give direction to his lawyer.

In this first “Police Caution” scene, the interviewing police officer tried to re-administer the Canadian police caution, almost 12 hours after the suspect’s arrest, for the reason that the previous attempts by other officers seemed to have failed due to the language barrier. It was close to 3:00 a.m., and as he tried to re-administer this caution, the suspect kept interrupting³³⁶ repeatedly, saying, “Please talk to my lawyer,” or “I cannot say anything until my lawyer is here.”³³⁷

In the meantime the police officer had to explain the whole “police caution” package, which were: 1) that the video recording was set as a safeguard; 2) that he and his partner were Toronto Police detectives; 3) that the interpreter was from an independent company, neither a policeman nor a lawyer; 4) that whatever the suspect had said to other police officers prior to this interview, i.e., before the administration of this police caution, all that former talking should not influence his testimonies from now on; 5) that to “retain and instruct counsel” meant to “hire” an attorney and give instructions to this attorney; 6) that if the suspect could not afford a lawyer, the Canadian government would pay for one, 7) that the suspect had a right not to answer his questions; but 8) that the Supreme Court of Canada had given the police a permission to ask any questions the police deemed were relevant.

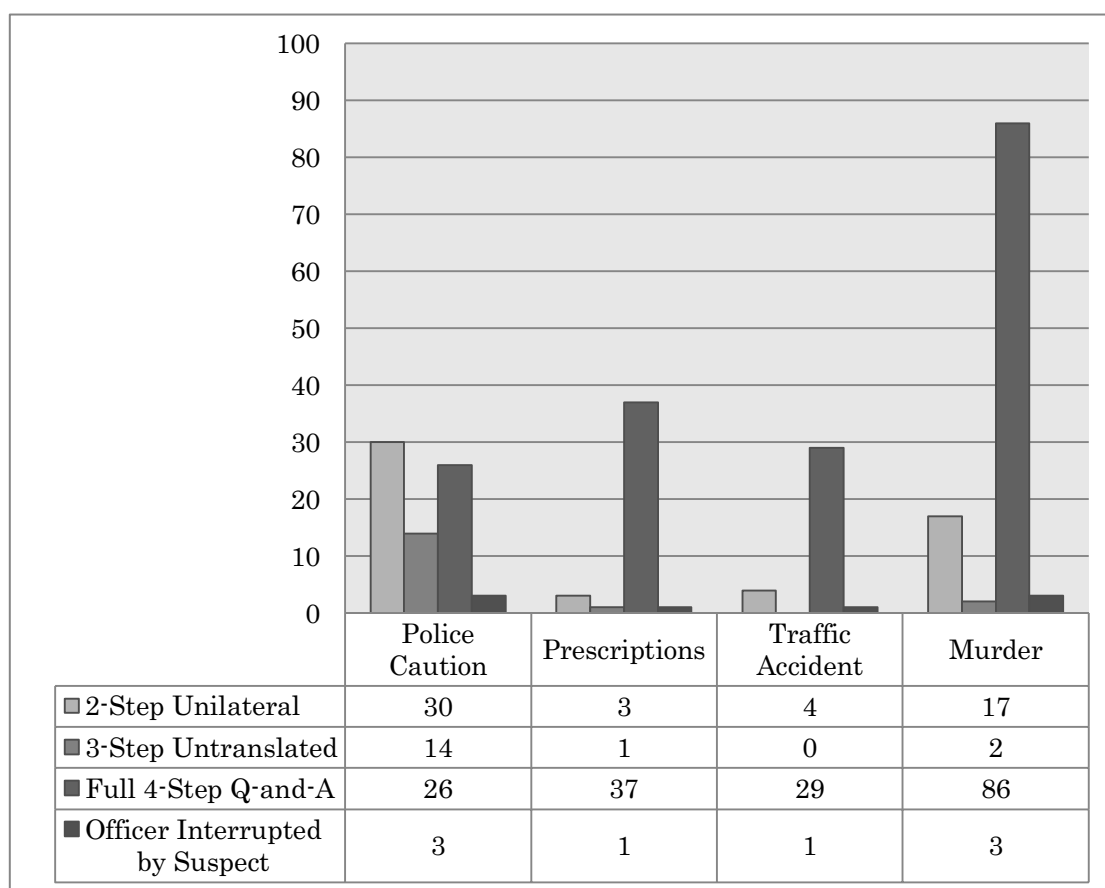
Normally, the police caution is a highly unilateral discourse, in which the police officer makes “notifications” and “confirmations.” We have already seen in Chart 8 in

³³⁶ The data reveals that the suspect made 5 interruptions during this first “police caution scene.” As a comparison, the suspect made 2 interruptions in the second scene, 1 in the third scene, and 5 in the fourth “murder interrogation” scene.

³³⁷ The suspect kept repeating that he did not wish to talk without his lawyer about 10 times during this 17:37-minute “Police Caution” scene, which was of no avail as the rule in Canada is that the police can ask the suspect any questions they deem relevant without the presence of his lawyer, although the suspect does not have to answer them if he does not wish to do so.

Chapter XI, D-2, *supra*, that the “2-Step Unilateral” cycle pattern had the largest share in this “Police Caution” scene, accounting for nearly 41 percent (30 out of 73 total). However, we can also see that “Full 4-step Q-and-A” cycle also constituted 36 percent (26 out of 73 total), and “3-Step Untranslated” accounted for 19 percent (14 out of 73 total). In other words, for the interviewing police officer, things were moving *not* so “unilaterally smoothly” as they normally would in a monolingual interview. Let us once again look at *Chart 8*, which was shown in Chapter XI, D-2, *supra*.

Chart 8: Turn-Taking Cycle Patterns by Four Interview Scenes



Sandra Hale, an Australian interpreting scholar, contends in *The Discourse of*

Court Interpreting that in court, counsel as well as the judge resort or switch to a “third person” to refer to the defendant when they lose control of the communication.³³⁸ By using “he (or she),” they can shift the burden to the interpreter of making what they want to make happen, as well as save their own face in case things fail, by making it seem like the failure was really the interpreter’s fault. Also, by addressing the defendant by the “third person,” they can exclude the defendant from the on-going discourse, denoting that “the witness who does not speak English can only be included if counsel so desires it.”³³⁹

Likewise, in this interview, too, by repeating to the interpreter such sentences as “Does *he* understand this?” using the “third person singular *he*” to refer to the suspect, the interviewing police officer might have been shifting some of the burden to the interpreter, though we can also observe that the officer also kept trying to correct himself consciously thereafter, like “And does *he*, do *you* understand that?” making sure that he addressed the suspect using the “second person *you*.”

In fact, as the interview went on, we can also observe that the interviewing officer kept trying to establish a much closer, better “rapport” with the suspect, by always addressing him by the “second person *you*,” while keeping as much eye contact as possible. It was, in fact, the suspect who kept trying to exclude the interviewing officer by using the “second person *you*” to address the interpreter, instead of the interviewing police officer, which also troubled the interpreter.

³³⁸ Sandra Beatriz Hale, *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness, and the Interpreter* (Philadelphia: John Benjamins Publishing, 2004), 191-192.

³³⁹ Hale, *The Discourse of Court Interpreting*, 191.

2. Suspect Addressing the Interpreter as “You”

The “check translation” has revealed that the suspect used the pronoun “you” a total of 16 times throughout the entire recording, and in fact all of them referred to the interpreter, not the police officer, one example of which was already shown in Discourse Clip 19, *supra*. In this example, the interpreter noticed that “you” referred to himself and thus added “he’s pointing to the interpreter,” to prevent a confusion. During the same “police caution” scene, the suspect used the pronoun “you” 8 times, all of which actually referred to the “interpreter,” and the interpreter also translated this pronoun as “you” 6 times, not knowing for sure if this “you” referred to the police officer or the interpreter himself, except for the above one example in which the interpreter added “he’s pointing to the interpreter.” The truth was that the suspect’s pronoun “you” always and consistently referred to the interpreter till the end of the recording.

The interpreter, probably sensing this, chose to simply drop the word “you” in the English translation thereafter all the way into the fourth “murder interrogation” scene, in which this problem resurfaced as a confusion as is shown in Discourse Clip 21.

Discourse Clip 21: Confusion Caused by the Misuse of “You”

P228:	You know she was killed today in your apartment.
ID249:	<i>Do you know she was killed in your apartment?</i>
S280:	<i>Earlier, “goftin (plural you)” told me that without my lawyer, I should not talk.</i>
IE241:	You told me that until...
S281:	<i><looking at the interpreter> Why do you do it like this? Do you know if my lawyer will come? When he comes, I will talk.</i>
IE242:	You told me that till my lawyer’s not (<i>sic</i>) here, don’t talk.
P229:	I told him that?
ID250:	<i>Did I say that?</i>

S282:	<i>On the telephone you told me.</i>
IE243:	On the telephone you told me.
P230:	We never spoke on the telephone.
ID251:	<i>I didn't talk...</i>
P231:	You and I never spoke on...
S283:	<i>That's right. That's right.</i>
ID252:	<i>You and I never...</i>
S284:	<i>That's right. That's right. Someone told me the police can only take your finger prints and take your picture...</i>
ID253:	<to pause the suspect> "OK,"
IE244:	The person who spoke to me on the phone,
P232:	Yes.
IE245:	He told me that only the police could take your fingerprints,
P233:	<putting up his hand to stop the interpreter> OK, stop, please. This is the conversation with the lawyer, yes?
ID254:	<i>Is this what you talked about with your lawyer?</i>
S285:	<i>Yes.</i>
IE246:	Yes.
P234:	<shaking his head> That's, that's private.
ID255:	<i>That's private. It's your own confidential content.</i>
S286:	<i>I don't know.</i>
IE247:	I don't know.

As the interrogation became increasingly charged about the murder of the suspect's wife, the suspect kept repeating that he (the suspect) did not want to answer any questions until his lawyer came. The suspect also kept asking the interpreter if he (the suspect) really had to answer all these questions, which was translated into English, and to which the officer kept responding that it was up to the suspect to decide whether to talk or not, and the officer kept asking the same questions. Thus came Line S280, "Earlier, 'goftin (plural you)' told me that without my lawyer, I should not talk." Here, the plural "you" referred to the interpreter and the duty counsel, who, with the suspect,

were all connected to a three-party telephone conference that had taken place an hour before this interview started, after which the suspect was introduced to this interviewing police officer for the first time when the interview began.³⁴⁰

The suspect continued in Line S281, “Why do you do it like this? Do you know if my lawyer will come? When he comes, I will talk,” now starting to blame the interpreter for not protecting him from the interrogating police officer. For the suspect, the counsel’s telephone advice that “the suspect did not have to answer any questions,” which the interpreter had translated for him also over the telephone, was no different from the interpreter himself telling the suspect the same thing. Because of this, the suspect started blaming the interpreter.

The interpreter, noticing this misunderstanding on the part of the 61-year old non-English speaking immigrant from the same home country, still had to translate the sentence to the police officer, who naturally became puzzled and asked back in Line P229, “I told him that?” which the interpreter conveyed to the suspect as “Did I say that?” in Line ID250, knowing that the suspect would still identify this “I” with the interpreter, and not the police officer. The suspect replied in Line S282, “On the telephone you told me,” using “you” again to refer to the interpreter and the counsel. However, this, translated back to the police officer, must have sounded moronic as he had neither met the suspect nor talked with him on the phone until the start of the interview, so he responded, “We never spoke on the telephone,” in Line P230.

At this point, the suspect realized the miscommunication and began to explain what he had heard from “the person” on the telephone, which was translated back to the officer by the interpreter, at which point the officer finally realized that the suspect was

³⁴⁰ *R v. Khairi*, 2012 ONSC 5549, [59, 61].

talking about what the counsel had advised him during the telephone conference and immediately reacted in a strong voice to “stop” the interpreter.

This big frustration for everyone took place because the suspect kept using “you” to refer to the interpreter and never addressed the interviewing police officer directly. The suspect was seated between the officer and the interpreter but was always looking at the interpreter, talking directly to the interpreter as a real “visible” fellow from the same home country, while excluding the officer as much as possible by building a psychological defense wall between the officer and himself.

3. Seating Position and Pronoun Use

In Chapter VII, C-1, *supra*, the thesis mentioned potential problems that may arise by placing an interpreter away from the interviewing officer, instead of placing him or her between the officer and the suspect.

In this interview, too, as can be seen in Chart 10, the interpreter is seated on the far right with only his knees appearing on the screen, right next to the suspect and away from the main interviewing officer who is shown in the middle. This was done most probably to protect the interpreter’s identity, but with accompanying sacrifices as we have seen. The interpreter’s seating position logistics, therefore, will remain as an issue in introducing digital video recording in interpreter-assisted police interviews.

Chart 10: Interpreter Seating Position Logistics



4. Interpreter Using “He” for the Police Officer’s “I”

In Table 6, *supra*, we can also notice that in the fourth “Murder Interrogation” scene, the interpreter began using the third person “he” more frequently to translate “I” of the police officer’s statements, using “indirect speech.” The major reason for this was most probably “distancing,” which, according to Hale,³⁴¹ is a footing shift that occurs when the interpreter tries to “distance” himself or herself momentarily in translating a sensitive or unpleasant matter. Though this is also against the code of ethics, it may have been inevitable, especially when the suspect kept using “you” to directly address the interpreter, often in an accusatory tone.

Another reason might have been a tinge of “sympathy” toward his fellow

³⁴¹ Sandra Beatriz Hale, *The Discourse of Court Interpreting*, 191. Here, Hale mentions an example of a court interpreter who deliberately used the “third person” to “distant” herself in translating a sensitive subject in a war crime trial and another example of a court interpreter who switched to the “third person” in translating a curse word in a statement.

countryman who was being “badgered” despite his repeated response that he did not want to answer without his lawyer, which was mentioned more than twenty times during this last 26-minute “Murder Interrogation” scene. This may also be substantiated by the fact that, according to the Dari “check interpreter” in Tokyo who helped the author with the check translation, the interpreter frequently used a “not so polite” third-person pronoun for, “he said,”³⁴² in translating the police officer’s statement using an “indirect speech.”

While an interpreter must always remain impartial, these slight footing shifts, often reflected in the pronoun use discussed in this section, are also undeniably occurring phenomena. The Dari interpreter who helped the author with the check translation, who has more than ten years’ experience as a legal interpreter in Tokyo, stated that such feelings as those mentioned above, if they had really occurred with this interpreter during this police interview, are in a way natural and inevitable and not to be strongly blamed as long as the rendered translations are accurate.

C. Accuracy Issue 1: Accuracy Assessment

The next question, therefore, is: were all the translations really accurate? As has been mentioned, this recording was submitted as an exhibit not because of any translation issues but because of the recording accident that had occurred. This means that for the then Ontario Superior Court of Justice, this interpreter passed the muster as an accurate and impartial “conduit” interpreter. The recording was also played during the trial for the jury, but without a check translation.

³⁴² The check interpreter mentioned that the interpreter frequently used the expression “*in mighe*,” which sounded more like “this guy said,” to refer to the interrogating officer, while a more polite expression “*in agha* (this person said)” was never used.

In this research, each Dari utterance was re-translated and carefully compared by the author with the help of the aforementioned Dari interpreter in Tokyo, the whole process taking more than 22 hours to check the 77:39-minute recording.

“Accuracy,” as we have seen in Part One of this thesis, is the most critical factor in determining the reliability of an interpreter’s work. It is of such paramount importance as would even subsume the determination of impartiality.³⁴³ We have also seen, however, that courts in the U.S. have usually held much more lenient accuracy standards for “police interpreters” than those for “court interpreters” for various reasons discussed in Chapter VI, *supra*.

Keeping in mind that constant exigency accompanied by an absence of relevant legislation could very easily create a hotbed of substandard due process protection, the thesis has examined the interpreting “accuracy” of the 2008 Toronto Police interview to see whether any unacceptable reductions, omissions, additions, alterations, had occurred.

1. Interpreting Accuracy Statistical Results

The following Table 7 shows the number of “accurate” and “inaccurate” renditions and the accuracy rate in each one of the 4 scenes.

³⁴³ See Chapter VI, E, *supra*.

Table 7: Translation Accuracy Verification Results

Scene		Re- duc- tions	Omis- sions	Addi- tions	Alter- a- tions	Accu- rate Rendi- tions	Total Ren- di- tions	Accu- racy Rate (%)	Confirma- tions, Explana- tions, etc.	
									Eng- lish	Dari
1:E-D		0	0	0	0	71	71	100%	7	4
1:D-E		1	3	0	3	32	39	82%		
2:E-D		0	0	0	0	41	41	100%	14	16
2:D-E		0	2	0	0	59	61	97%		
3:E-D		0	0	0	0	31	31	100%	14	20
3:D-E		3	5	0	3	66	77	86%		
4:E-D		0	0	0	0	108	108	100%	9	14
4:D-E		1	5	1	3	117	127	91%		
To- tal	<div></div>	5	15	1	9	525	555	95%	44	54
	E-D	0	0	0	0	251	251	100%	<div></div>	<div></div>
	D-E	5	15	1	9	274	304	90%	<div></div>	<div></div>

(Scenes: 1: police caution; 2: prescriptions; 3: car accident; 4: murder)

(E-D: from English to Dari; D-E: from Dari to English)

During the entire 77:39-minute recording, the interpreter made a total of 653 utterances, out of which 348 were in English and 305 were in Dari. Out of these 348 English utterances, 44 were *not* translations from Dari but were the interpreter's own statements made in English. The content analysis of these 44 statements were already made in Chapter XII (this chapter), A-1, *supra*, using Goffman's terminology, "principal" and "author,"³⁴⁴ which discovered that they were, for the most part, "direct exchanges" with the police officer for the purpose of "explanations," "requests for permission to make confirmation with the suspect," "apologies about an extra pause time," or

³⁴⁴ Goffman, *Forms of Talk*, 144. Also, see Chapter IX, B-2, *supra*.

“questions for the police officer.” The second right column in Table 7 above shows a more detailed breakdown of those 44 English utterances by the interpreter by each scene.

Also, in Chapter XII (this chapter), A-2, *supra*, it was mentioned that the police officer made a total of 284 utterances, 27 of which were simple nods and responses to the interpreter’s own statements made in English,³⁴⁵ while the interpreter made 305 utterances in Dari. This means that by a simple calculation of “ $305-(284-27)=48$,” we were able to guess that at least those extra 48 utterances in Dari by the interpreter were “direct exchanges” with the suspect, perhaps for the purpose of confirmation or clarification.

A complete “check translation” finally corroborates that this, in fact, was an accurate speculation. As is also shown in Table 7, out of the 305 total utterances made by the interpreter in Dari, only 251 ($=71+41+31+108$) were actual “translations of the police officer’s English statements into Dari,” and the remaining 54 utterances in Dari were “direct exchanges” with the suspect, a further breakdown of which is shown in the far right column. For English-speaking fact-triers, this 54 out of the 305, or nearly 18% of the total utterances in the foreign language which do not sound like actual translations, may easily become a source of suspicion, a “potential distrust of reliability” which only a “check translation” can dispel, by showing that all of these 54 extra utterances in Dari were “necessary” to confirm the suspect’s unclear or verbose statements or to re-explain the officer’s question in order to ensure an accurate communication.

By conducting a detailed “translation accuracy” verification, the author of the thesis has validated that in total, 95% of all the renditions, both English to Dari and Dari

³⁴⁵ See the first sentence in Chapter XI-D, *supra*.

to English, were “accurate.” The breakdown by “translation direction” shows that out of the total 555 renditions, 251 out of 251, or 100% of English-Dari translations, and 274 out of 304, or 90% of Dari-English translations were “accurate.”

The reasons for this discrepancy by “translation direction” are probably as follows. First, as in most police interviews but particularly in this one, the interviewing police officer spoke much more clearly and coherently with carefully premediated and phrased questions, which, for any interpreters, are much easier to translate. Second, conversely, suspects in a police interview may, for various reasons, speak in a not so clear, organized way in responding to an interrogating officer’s questions. This particular suspect also spoke in a rather “disorganized” discourse style, suddenly rattling away, often with little coherence or cohesion, making the job extra difficult for the interpreter. The third possible reason is that though the interpreter, who was apparently a native speaker of Dari, demonstrated a very high English proficiency as a “non-native speaker,” still translating into one’s non-native language usually poses more challenge than the other way, though it has advantages as well.³⁴⁶

Having mentioned these, though these percentage figures above look sufficiently high, in order to delineate the “conduit” boundaries accepted by the then Ontario Superior Court of Justice, let us further examine what kind of “inaccurate” translations had occurred.

³⁴⁶ In the interpreting industry, the interpreter’s native language is called “A language” and the non-native language into which the interpreter translates is called “B language.” While many international conferences prefer interpreters translating from “B language” to “A language,” such luxury does not exist in court interpreting, let alone in police interpreting. Also, interpreters of “rare” or “minor” languages always have to interpret “both ways.” In police interpreting, especially, suspects of a “rare” dialect of a “minor” language are never uncommon, in which case, interpreting work is usually impossible unless the interpreter is a native-speaker of the suspect’s language. In this respect, the suspect in this police interview, in the author’s opinion, was extremely fortunate.

2. Accuracy Assessment Criteria

The NAJIT defines accuracy as follows. The translation must: 1) conserve all the elements of the original message; 2) accommodate the syntactic and semantic patterns of the target language; 3) make the rendition sound natural in the target language; 4) not distort the original message through addition, omission, explanation, paraphrasing; and 5) convey all hedges, false starts and repetitions.³⁴⁷

The NAJIT, however, also mentions that “[s]ome judges and attorneys have a mistaken belief that an interpreter renders court proceedings word for word, but this is impossible since there is not a one-to-one correspondence between words or concepts in different languages,” and that “[r]ather than word for word, then, interpreters render meaning by reproducing the full content of the ideas being expressed,” concluding that “[i]nterpreters do not interpret words; they interpret concepts.”³⁴⁸

Keeping the above seemingly “ambivalent” definitions of “accuracy” in mind, this thesis, as was already discussed in Chapter IX, D-2, *supra*, has based its “accuracy” determination primarily on the “pragmatic meaning” of each rendition, as is shown in Table 8 below.

³⁴⁷ “Code of Ethics and Professional Responsibilities,” NAJIT (National Association of Judiciary Interpreters and Translators), <http://www.najit.org/certification/profession.php>.

³⁴⁸ “Frequently Asked Questions about Court and Legal Interpreting and Translating,” National Association of Judiciary Interpreters and Translators, <http://www.najit.org/certification/faq.php#techniques>.

Table 8: Accuracy Determination Criteria

Category	Criteria
Reduction	The overall “pragmatic” ³⁴⁹ meaning is retained, but many details have been dropped to make the rendition a mere “summary” of the original which was much longer.
Omission	The “pragmatic” meaning has been distorted by an omission of one or more critical elements of “propositional” or “semantic” meaning.
Addition	The “pragmatic” meaning has been distorted by an addition of one or more critical elements of “propositional” or “semantic” meaning.
Alteration	The “pragmatic” meaning has been distorted by an alteration (an omission replaced by an addition, or an omission and an addition taking place concurrently in a single rendition) of one or more critical elements of “propositional” or “semantic” meaning.

D. Accuracy Issue 2: Accuracy Check on Reductions, Omissions, Additions, and Alterations

Let us look at each category criteria with examples.

1. Reductions

As has been mentioned above, the suspect in this interview tended to rattle away, often with little cohesion. This presented an enormous difficulty for the interpreter who was translating without taking notes. Whenever a confirmation or repetition was necessary, the interpreter did stop and asked the suspect for clarification or repetition, with or without the police officer’s permission, though reproducing all the details was

³⁴⁹ For the definition of “pragmatic meaning,” please see the discussion in Chapter IX, B-1, *supra*.

never easy, which led to “reductions” or “omissions.” First, let us look at an example of a reduction in the following Discourse Clips 22.

Discourse Clip 22: Reduction

P243:	Before the police?
ID264:	<i>Before the police came?</i>
S294:	<nodding first, and then continuing in a strong pitch> <i>Before the police arrived. The police were late. The police were very, very late. The police did not want to come [to my house]. The police were scared that maybe I had something. I told them I didn't have anything [dangerous], so “come and find out.”</i>
IE255:	Before the arrival of the police....the police were scared. They came very, very late, and I told them, come on, there's nothing with me.

As is explained in “Reduction 5” in the “Complete Annotated Transcript of Dari-Interpreter-Assisted Toronto Police Interview” in Appendix 1, the details in S294 describing how the police seemed to be acting right before the suspect's arrest (“*The police did not want to come [to my house]. The police were scared that maybe I had something. I told them I didn't have anything (dangerous), so ‘come and find out.’*”) were reduced in IE255, though the overall pragmatic meaning in the context was retained.

2. Omissions

“Reduction” and “omission” are similar in that in both certain elements of the source-language utterance become deleted, so where to draw the line is not always clear-cut. One criterion is that while “reduction,” just like a “summary,” basically retains the main points or the “pragmatic” meaning of the source-language utterance,

“omission” distorts them by deleting one or more critical or indispensable elements of the “propositional” or “semantic” meaning of the original utterance, as in shown in Discourse Clips 23.

Discourse Clip 23: Omission

S176:	<i>I couldn't speak the language, but there was an Indian there, so I asked him to translate what they were saying so I would know what I should do.</i>
IE145:	I couldn't speak English, so there was an Indian. I asked him to go with me to see what they were saying, so... <interrupted by the suspect>
S177:	<i>He had a patient, too. His small daughter was ill.</i>
IE146:	They also had a patient there, (OM9)
S178:	<i>Beside me.</i>
IE147:	beside me.

As was also explained in “Omission 9” in the “Annotated Transcript” in Appendix 1, “*His small daughter was ill*” in S177 was omitted from IE146, thus making the meaning of “they” in “[t]hey also had a patient there” unclear (the Indian man’s family or the hospital?). While this detail may not have been very important, such judgment is for the fact-triers to make, so interpreters must try to retain all the details constituting the given facts. In almost all interpreting work, an “omission” is probably one of the most common inaccuracy factors, and in this interview, too the largest number was observed in this “omission” category, totaling to 15.

The interpreter in this interview often tried to “recover” such omissions by making the previously mentioned “extra round-trips” with the suspect in Dari, though all were not always recovered. If an omission was “recovered” in such subsequent

exchanges, it was not counted as one in this research. Only those omissions which remained “unrecovered” in the immediately adjacent exchanges were counted as “omissions.”

3. Additions

In contrast to these “omissions,” only one “addition” was observed in this particular interview as is shown in Discourse Clip 24.

Discourse Clip 24: Addition

P181:	And what was the matter? (4S 102)
ID197:	<i>What was the matter?</i>
S221:	<i>I don't know very much <u>without</u>... My head aches, and my brain is not</i>
IE189:	<i>well.</i>
S222:	I cannot say anything without my lawyer. Right now, I'm fainting.
IE190:	<i>As I said before, I'm not feeling well and feel like fainting.</i> I'm getting the sweat, and also I'm fainting.

As is also explained in “Addition 1” in Appendix 1, *infra*, in S221, there was no word after “*without*,” but in IE189 the word “my lawyer” was added after “without,” most probably by an inference made by the interpreter.³⁵⁰

4. Alterations

An alteration is a change or distortion of the pragmatic meaning of the original utterance caused, usually, by a lack of knowledge about the interlingual equivalence or a

³⁵⁰ The check-interpreter the author hired for this research played this section numerous times but was not able to hear the word “lawyer” in the original Dari utterance made by the suspect.

lack of translation skill. It also happens as a result of misunderstanding or a simple error. Though many were minor, a few alterations in this interview seemed critical, as are shown in the following Discourse Clips 25-1 and 25-2.

Discourse Clip 25-1: Alternation 1

P220:	And what happened?
ID239:	<i>And what happened?</i>
S269:	<u><i>I don't remember.</i></u>
IE232:	<i>I don't know...that incident.</i>
S270:	<i>I told you, without my lawyer, I can't say anything!</i>
IE233:	Until my lawyer's not (<i>sic</i>) here, I can't say anything.

Discourse Clip 25-2: Alternation 2

P266:	And do you remember what time your oldest son got out?
ID285:	<i>Do you remember what time your eldest son left home?</i>
S324:	<i>No, I don't remember well. This "vaghe (accident/incident)" was very "ghavi (forceful/powerful)." I don't remember at all.</i>
IE284:	No, I don't remember, from <i>this incident, maybe 15 or 20 minutes earlier.</i>

Discourse Clip 25-1 and Discourse Clip 25-2 are mirror opposite examples of how the interpreter “altered” the original meaning by the word choice in the target language rendition. In both discourses, the suspect was adamantly insisting that: 1) he knew nothing about what the police officer was telling him to talk about, and 2) he did not want to talk without his lawyer.

In Discourse Clip 25-1, the police officer kept asking “And what happened?” (Line A220). While the suspect only responded “I don’t remember (Line S269),” the interpreter translated it as “I don’t know...that incident.” The word “incident” used

with “that,” a pronoun functioning as a definite determiner, could have been significantly damaging for the suspect if his testimony had been the only evidence the police had, as this usage “*that* incident” in English implies the speaker’s “knowledge” about “what specific incident” was being questioned about.

Discourse Clip 25-2 shows an opposite phenomenon. The suspect finally started using an expression indirectly hinting his knowledge about “the incident” by choosing the word “*vaghe* (accident/incident)” and even using an adjective “*ghavi* (forceful/powerful).” This time, however, the interpreter not only omitted this critical adjective “*ghavi* (forceful/powerful),” but also added something the suspect had not said, which was “maybe 15 or 20 minutes earlier,” probably influenced by what the interpreter had heard the suspect mention earlier in Line S293, which was, “*My son left home about 15 or 20 minutes earlier.*” Still, it is even mysterious as to why such an addition and an omission took place simultaneously, altering the meaning of the original utterance.

5. Total of 32 Utterances in Goffman’s “Author” Role: “95.1% Conduit”

How would the above results translate into Goffman’s “author” role? In Chapter IX, B-2, *supra*, the thesis mentioned that the “author” role is the closest to what an interpreter does when he or she intentionally adds, omits, reduces or alters the content, which is basically a clear deviation from the “prescribed conduit” role, though sometimes it must be done for a clear purpose.

As was shown in Discourse Clip 17 in Chapter XII (this chapter), A-1, *supra*, the interpreter made 2 English utterances in an “author” role, but they seem to have been made for a clear, justifiable purpose. In addition, however, as was shown in Table 7 in

Chapter XII (this chapter), C-1, *supra*, the interpreter made a total of 30 inaccurate translations (5 reductions, 15 omissions, 1 addition, and 9 alterations, all from Dari to English). Obviously, many of them were made inevitably or inadvertently but still were based on the interpreter's on-the-spot "authorship" judgement, because if the interpreter really felt uncertain, he could have always confirmed or clarified, as he did with other renditions, in order to prevent what turned out to be "inaccurate" translations.

Thus, if we apply a most strict standard, these 32 utterances (2 in English as the interpreter's own utterances and 30 in the form of Dari to English translations) would have to be categorized as those which fall into the "author" role defined by Goffman. These 32 utterances made in the "author" role, which is a clear deviation from the "prescribed conduit" role, constituted 4.9% of the total 653 utterances the interpreter made during the entire recorded interview. Conversely, this interpreting work which the then Ontario Superior Court of Justice deemed as a satisfactorily "conduit" performance has been corroborated as "95.1% conduit" interpreting, based on most strict assessment criteria.

E. Accuracy Issue 3: Translation Difficulties

In this interview, the interpreter faced several translation difficulties. Though each one was handled in the best possible way, the following should be mentioned.

1. Police Caution

The first major translation difficulty took place with the following police caution as can be seen in Discourse Clip 26.

Discourse Clip 26: Police Caution: Before “Check Translation”

P062:	...and other officers, other than my partner and myself, have spoken to you,
ID065:	XXX.
S050:	<nodding a couple of times> XXX.
P063:	I don't want, anything they have said to you, to make you think, that you need to talk to me.
I005:	<to the police officer> Ah..., I don't understand this word...
P064:	I don't want anything that the officers have said to him to make him think that he needs to talk to me, to influence him to talk to me. I don't want that to happen.
I006:	<to the police officer> OK, so whatever other officers told you..., ah whatever other officers spoken (<i>sic</i>) to him doesn't mean that you are, you have told him? So, I don't understand this part.
P065:	<moving forward in his chair> The other officers that had contact with you here,
ID066:	XXX.
P066:	I don't want that contact, that talking,
I007:	OK,
ID067:	XXX.
S051:	<nodding> XXX.
P067:	to make you think that you need to talk to me.
ID068:	XXX.
S052:	XXX.
IE037:	I will talk, but since my lawyer's not here, how can I talk?

As has already been mentioned in Chapter XI, D-2, and Chapter XII (this chapter), B-1, *supra*, the primary pragmatic functions of this “Police Caution” scene are “notifications” and “confirmations,” which are conducted in “2-Step Unilateral” turn-taking. The first part of Discourse Clip 26 shows that the interpreter was having an obvious difficulty understanding the fundamental logic of this police caution even after the second, paraphrased sentence from the officer, which shows in his confirmation

question in Line I006, “OK, so whatever other officers told you..., ah whatever other officers spoken (*sic*) to him doesn’t mean that you are, you have told him? So, I don’t understand this part.” Clearly, he was not getting it yet.

The third time, the officer moves forward in his chair and chunks the sentence into three parts, which the interpreter starts translating. At the end, we hear the suspect responding, “I will talk, but since my lawyer’s not here, how can I talk?” Just by listening to the recording only, however, there is no way of ascertaining if this crucial part of the police caution was correctly translated and communicated to the suspect.

“Incomprehensibility” of the police caution discourse is a notorious problem, which becomes compounded when it has to be translated to an LEP suspect. Therefore, many police officers with good intentions chunk the caution into short segments and present them bit by bit, thinking that doing so would make the interpreting work easier. However, doing this often makes the problem even worse far from helping it.³⁵¹ Especially, had this particular part had to be translated into a language which has a completely different syntactic structure, e.g., a language with a predicate-verb coming at the end of a sentence, like Japanese, the translation may have become a disaster unless the interpreter had been sufficiently familiar with the logic structure of the police caution. For instance, Line A066, “I don’t want that contact, that talking,” may very easily become mistranslated as a separate independent sentence, unless the interpreter is legally and linguistically proficient enough to recognize that the “object” of the verb “want” will be followed by a “*to*-infinitive complement.”

Whether a caution was correctly translated can only be verified through a check

³⁵¹ Hale also points out the problem of chunking the police caution in Sandra Beatriz Hale, *Community Interpreting* (New York: Palgrave Macmillan, 2007), 77.

translation like the following Discourse Clip 27.

Discourse Clip 27: Police Caution: After “Check Translation”

P062:	...and other officers, other than my partner and myself, have spoken to
ID065:	you,
S050:	<i>Other officers, except me and my partner, have spoken with you.</i> <nodding a couple of times> “ <i>Baleh</i> (Yes).”
P063:	I don’t want, anything they have said to you, to make you think, that you need to talk to me.
I005:	<to the police officer> Ah..., I don’t understand this word...
P064:	I don’t want anything that the officers have said to him to make him think that he needs to talk to me, to influence him to talk to me. I don’t want that to happen.
I006:	<to the police officer> OK, so whatever other officers told you..., ah whatever other officers spoken (<i>sic</i>) to him doesn’t mean that you are, you have told him? So, I don’t understand this part.
P065:	<moving forward in his chair> The other officers that had contact with you here,
ID066:	<i>The other officers have spoken with you here.</i>
A066:	I don’t want that contact, that talking,
I007:	OK,
ID067:	<i>The talk that they had with you,</i>
S051:	<nodding> “ <i>Baleh</i> (Yes).”
P067:	to make you think that you need to talk to me.
ID068:	<i>does not require you to tell me the same as what you told them.</i>
S052:	<i>I will talk, but I said without my lawyer I don’t know what to say.</i>
IE037:	I will talk, but since my lawyer’s not here, how can I talk?

The check translation in Discourse Clip 27 shows that in fact the police caution was accurately conveyed. The translation is in a slightly different syntactic and semantic structure, so it is definitely not a “word-for-word” translation, but the pragmatic meaning of the translation accurately renders the logic structure of the police

officer's original statement.

2. Finding Lexical Equivalence

The next translation problem was caused by a typical interlingual “conceptual vacuum” as is shown in Discourse Clip 28.

Discourse Clip 28: Difference between “Medicine” and “Medication”?

P075:	After you spoke to your lawyer,
ID076:	<reaching for a bottle of water placed on the floor and getting a quick sip> XXX,
S055:	XXX.
P076:	you asked for some medicine.
ID077:	<putting the bottle back on the floor> XXX.
S056:	XXX.
IE040:	Yes.
P077:	When you came to the police station,
I008:	<interrupting the police officer> Let me correct that, please.
P078:	I'm sorry?
I009:	Because, because I said something different.
ID078:	<to the suspect> XXX,
S057:	XXX.
ID079:	<to the suspect> XXX?
S058:	XXX.
I010:	OK, I've just corrected, because I said, “You asked for medication,”
A079:	Instead of “medicine”?
I011:	Yes.
A080:	OK, perhaps medication is a better term.
I012:	XXX, yes.

After listening to Discourse Clip 28, an average English-speaking fact-trier

would probably wonder, first of all, what the difference would be between “medicine” and “medication” that forced the interpreter to make such an immediate correction, and secondly, whether an equivalent of whatever fine distinction that exists in English also exists in Dari.

These questions, too, can only be answered by looking at the check translation, which provides the following information as in Discourse Clip 29.

Discourse Clip 29: Difference between “Medicine” and “Medication”: Check

Translation

P075:	After you spoke to your lawyer,
ID076:	<reaching for a bottle of water placed on the floor and getting a quick sip> <i>After you spoke with your lawyer,</i>
S055:	<i>“Baleh (Yes).”</i>
P076:	you asked for some medicine.
ID077:	<putting the bottle back on the floor> <i>You asked for “dava (medicine).”</i>
S056:	<i>“Baleh (Yes).”</i>
IE040:	Yes.
P077:	When you came to the police station,
I008:	<interrupting the police officer> Let me correct that, please.
P078:	I’m sorry?
I009:	Because, because I said something different.
ID078:	<to the suspect> <i>When you talked to your lawyer,</i>
S057:	<i>“Baleh (Yes).”</i>
ID079:	<to the suspect> <i>did you asked for “davayet (your medicine)”?</i>
S058:	<i>Yes, “davabejeman (my medicine).”</i>
I010:	OK, I’ve just corrected, because I said, “You asked for medication,”
A079:	Instead of “medicine”?
I011:	Yes.
A080:	OK, perhaps medication is a better term.
I012:	<i>“Dava (medicine),” yes.</i>

Discourse Clip 29 shows both the answers to the two questions mentioned above and a possible new problem. First, it seems that in Dari, the word medicine “*dava* (medicine)” is inflected with a possessive suffix and becomes “*davayet* (your medicine)” or “*davabejeman* (my medicine).” When the suspect was arrested and taken to the police station, he had most probably left “his medicine (prescriptions)” at home which needed to be brought to where he was being detained. The first translation “*dava* (medicine),” however, refers to “medicine in general,” so the first sentence may have sounded as if the suspect, after being detained, began to feel sick and so asked the police if they had any medicine that he could take.

Finding this much, the interpreter’s explanation using “medicine” and “medication” seems to make a lot of sense, except that in a hurried exchange, the interpreter seems to have gotten the two words the other way round. He should be using the word “medication” to refer to the suspect’s prescriptions, not “medicine,” but unfortunately it seems that he ended up getting them the other way round.

F. Accuracy Issue 4: Register and Style

In addition to the above translation-specific accuracy issues, “Canon 1. Accuracy” of the NAJIT Code of Ethics also stipulates that the “register, style, and tone of the source language” must also be retained.³⁵² Regarding this aspect of accuracy, the following has been observed in this particular police interview.

Speaking in or translating into English, the interpreter in this interview sounded rather “polite” or “well-mannered” to the author of this thesis. This was mainly due to

³⁵² “Code of Ethics and Professional Responsibilities,” NAJIT (National Association of Judiciary Interpreters and Translators), <http://www.najit.org/certification/profession.php>.

the general tone and the register of his English. For example, look at the following two discourse clips, Discourse Clips 30 and 31.

Discourse Clip 30: Addition of “Sir”

P006:	...to protect any question that...we have said something we have not said.
ID006:	<i>We will record any questions that we will ask.</i>
S003:	<turning to the interpreter> <i>I must ask my lawyer.</i>
IE002:	Should talk to my lawyer, Sir.

Notice that in Line IE002 the interpreter added a politeness marking address “sir” at the end of his translation given to the interviewing police officer. The “check interpreter” verified, however, that the suspect’s original rendition “I must ask my lawyer (Line S003)” did not sound particularly polite, or even sounded rather “blunt.” Similarly, look at the use of the expression “allow me to” in the following Discourse Clip 31.

Discourse Clip 31: “Allow Me To”

P133:	And you have a sore leg.
ID137:	<i>You have a sore leg.</i>
S125:	<i>Yes, please give me a little time. I will explain the accident more completely and accurately.</i>
IE102:	Please allow me to explain this traffic accident.

This exchange took place at the beginning of the third “Past Car Accident” scene. When the police officer mentioned the suspect’s past involvement in a car accident, the suspect suddenly became eager to speak. In Line S125, the suspect said

“I will explain the accident more completely and accurately,” which, according to the “check interpreter,” sounded more like “I will give you a more detailed, complete version of the account,” which was nothing like a polite request for permission. However, note that the interpreter’s translation of this statement in Line IE102 sounded like a much more polite and formal request for permission starting with “Please allow me to.”

This “more polite” register in the interpreter’s “English” renditions had originally given the author of the thesis a rather “favorable” initial image about the suspect, an elderly male immigrant who, though not literate, had due manners and common sense. According to the “check interpreter,” however, the suspect’s speaking style, tone, and register gave her the impression that he was rather “unpolished and unrefined,” not showing very many signs of “properly taught manners,” and sounded quite “rural and provincial.”

This was an illuminating discovery also accompanied by another finding already mentioned in Chapter XII (this chapter), B-4, *supra*, that the interpreter frequently used a “not so polite” third person pronoun³⁵³ in translating the police officer’s statement into Dari for the suspect, using indirect speech.

On the point of “register and style” therefore, the interpreter in this interview did not always provide a strictly “equivalent” rendition, though from an interpreter training standpoint, retention of such “register and style” in police or court interpreting requires a much higher skill than in an average “conference interpreting” job, as in the latter most speakers come from a much more “socio-linguistically homogeneous” group

³⁵³ As was mentioned in fn. 342, the interpreter frequently used the expression “*in mighe*,” which sounded more like “this guy said,” to refer to the interrogating officer, while a more polite expression “*in agha* (this person said)” was never used.

of an “educated class” and speak with similar language register and style.

That having been said, however, the above-mentioned register gap between English and Dari, accompanied by the interpreter’s particular choice of the third-person pronoun to refer to the police officer, may not help create a perfectly impartial impression, though as was already mentioned in Chapter XII (this chapter), B-4, *supra*, this may have been only very natural and inevitable between two male immigrants from the same home country. In the end, these are what the triers of fact will have to judge.

G. Summary of Accuracy Verification: from an Interpreting Expert Witness’s Standpoint

As long as an interpreter is human, errors and mistakes do occur, though when it comes to interpreting, even machines may not surpass the expertise of truly skilled interpreters in a long time.

1. 95% Accuracy and 95.1% Conduit

In this police interview, too, as was already shown in Table 7, the interpretation was not 100% accurate, though the figures showed a remarkable high average accuracy rate of 95% in total, 100% for English-Dari translations and 90% for Dari-English translations. Also, throughout the entire recording, the interpreter performed as 95.1% conduit. Considering the fact that this interview began past midnight, around 3:00a.m., and the interpreter made a total of 555 translations back and forth with no break taken during the entire 77:39-minute part of the interview, providing each rendition with an average pause time of “0.5 second from English to Dari” and “0.428 second from Dari to English,” this 95% average accuracy rate shows, in the opinion of the author of this thesis if acting as an expert witness, that this interpreter can be deemed as highly

proficient and reliable.

2. Confirmations and Corrections (15.1% of Total Utterances): Sign of Reliability

For interpreters whose work requires instantaneous renditions, making confirmations and corrections by stopping the clients or by asking the clients for permission to make those remedies requires humbleness, honesty, and sincerity.

In this interview, the interpreter made a total of 98 utterances (44 in English and 54 in Dari, comprising 15% of his total utterances in both languages) solely for the purpose of making confirmations and corrections. From an interpreting expert witness's point of view, this seems to demonstrate another very important quality that attests to his reliability as an honest, sincere, and conscientious interpreter.

3. Check Interpreter's "Check Translation": Absolutely Indispensable

The thesis concludes this chapter by emphasizing that both Chapter XI, *supra*, and Chapter XII (this chapter) have more than sufficiently demonstrated that a check interpreter's "check translation" is absolutely necessary and indispensable, not only for the purpose of validating the accuracy of the interpreter's translations but also to "dispel" any potential "suspicion" created by the inevitable "foreign language" exchanges that, though not ideal, must take place for the purpose of confirmations and clarifications to ensure "accurate" translation and communication.

All the findings that have been shown and discussed in these two chapters would be what the author of the thesis would testify to from an interpreting expert witness's standpoint, and what the fact-triers would obtain as crucial additional evidence to base their judgement on in assessing the reliability of the interpreter's translation.

Chapter XIII

Accuracy and Impartiality Determination by Fact-Triers

After listening to all the data and explanations presented in the testimony by an interpreting expert witness, the triers of fact must determine the “reliability” of the interpreter’s translation on the basis of its “accuracy” and “impartiality.” For this purpose, mandatory recording alone will never be sufficient. Only with an accompanying “check translation,” monolingual fact-triers can, for the first time, make truly complete determinations on the translation accuracy and interpreter impartiality .

A. Recording and Transcript for Accuracy Determination

As was already shown in Chapter XI, B-1, *supra*, in the recording this thesis has analyzed, the three participants made a total of 1,283 utterances: 284 by the police officer, 346 by the suspect, 305 Dari utterances by the interpreter, 304 English translations by the interpreter, and 44 as the interpreter’s own utterances in English.

Out of the total 284 utterances made by the police officer, 257 were addressed to the suspect in the form of notifications, confirmations, questions, and challenges. Of the 305 Dari utterances made by the interpreter, 251 were translations of the police officer’s questions into Dari, and the remaining 54 utterances were used for confirmation of the meaning with the suspect in direct exchanges.

In short, the triers of fact would have to determine the accuracy of the interpreter’s 251 translations from English to Dari and 304 translations from Dari into English, which amount to a total of 555 renditions. A complete authenticated transcript

of “check translation” would be absolutely indispensable for such determination work, as only by comparing each translation pair (the police interpreter’s translation during the interview and the expert witness’s “check” translation) made available in English, the fact-triers can, for the first time, make any meaningful accuracy determination.

B. Recording and Transcript for Impartiality Determination

As we have seen, detection and determination of “impartiality” is more difficult than that of “accuracy,” as “impartiality” is less transparent than “accuracy.” For this reason, many court rulings have required a clear and tangible proof of “bias” shown, almost always, in the form of “inaccurate translations caused by bias.”³⁵⁴ For this purpose, too, a complete “check translation” transcript is of vital importance, not only for accuracy determination but also for impartiality determination.

Also, the thesis has demonstrated that what may count more in assessing the interpreter’s bias is the evaluation of all the “asides” made by the interpreter. As was mentioned above, the interpreter in this interview made 54 utterances in Dari which were not translations from English, and likewise 44 English utterances which were not translations from Dari, constituting a total of 98, or 15% of all the utterances he made.

If English-speaking, monolingual fact-triers listened to the video-recording only, they would only “indirectly get an impression” that the interpreter is making many more utterances in Dari than the original utterances made by the police officer. In addition, while the suspect made 346 total utterances, the interpreter made only 304 total translations into English, which may also become disturbing for monolingual fact-triers.

Only with a complete “check translation,” all these unintelligible “asides” and

³⁵⁴ See Chapter VI, E, *supra*.

possibly untranslated information can be examined, verified, and assessed for their impartiality. Thus, only with such “check-translation,” the fact-triers can make a truly informed judgement on the interpreter’s impartiality by assessing his “verbal demeanor.”

C. Recording and Transcript: Feasible, Cost-Effective, and Absolutely Indispensable

As has been stated in Chapter VII, D-3, the recording and the translation transcript will each become independent and indispensable evidence for the fact-triers, not just one being auxiliary³⁵⁵ or superfluous.

These new changes would undoubtedly impose extra burden and cost, but just like the Court Interpreters Act of 1978, which dramatically improved the downstream due process for LEP suspects in the U.S., the implementation is never infeasible. On the contrary, the new changes will prove cost-effective³⁵⁶ as they will significantly improve the quality of evidence gathered in the upstream criminal process, by giving the police a strong incentive to start using certified interpreters who would pass muster as truly “conduit” interpreters, enabling the application of FRE 801(d)(2)(A).

The U.S. jurisprudence demonstrated a landmark example with the 1978 Court Interpreters Act. Linguistic diversity and language needs in every corner of the world have been accelerating since then. It is the author’s strong and sincere hope and wish that the U.S. will once again set a similar example to those parts of the world that still lag further behind, including the author’s home country, Japan, of improved due process rights protection for LEP suspects in the upstream criminal justice process.

³⁵⁵ *United States v. Onori*, 535 F.2d 938, 948 (5th Cir. 1976), 947. See Chapter VII, D-3, *supra*.

³⁵⁶ See the discussion in Chapter VII, D-1, *supra*.

Appendix 1

Complete Annotated Transcript of Dari-Interpreter-Assisted Toronto Police Interview

The following is a complete annotated transcript of the Dari-interpreter-assisted Toronto Police interview that was conducted on March 19, 2008.

A. Participants/Interlocutors (3 Participants/5 Interlocutors)

P	Police Officer's utterances (There are two officers. This is the main, interviewing officer.)
ID	Interpreter speaking in Dari (Translation of Police Officer's English utterances into Dari and Interpreter's own utterances in Dari. Only their English check-translations in <i>italics</i> are shown.)
S	Suspect's utterances in Dari (Only their English check-translations in <i>italics</i> are shown.)
IE	Interpreter's translation of Suspect's Dari utterances into English
I	Interpreter's own utterances in English

B. Transcription Markers

001-	Number for each interlocutor's utterance; the number counts cumulatively up to each total as follows: P001-P284 (total of 284 utterances) ID001-ID305 (total of 205 utterances) S001-S346 (total of 346 utterances) IE001-IE304 (total of 304 utterances) I001-I044 (total of 44 utterances)
non- <i>italic</i> sentences	Utterances rendered in English (Police Officer's utterances, Interpreter's translation of Suspect's Dari utterances into English, and Interpreter's

	own utterances in English). A Dari word that appears in an English sentence is shown in <i>italics</i> enclosed in quotation marks. (Example: I013: Just on a correction, I asked what's the word " <i>nafgh bad</i> ," so explained "gas.")
<i>italic</i> sentences	English check-translation of the utterances originally rendered in Dari (Suspect's utterances, Interpreter's translation of Police Officer's utterances into Dari, and Interpreter's own utterances in Dari). If an English word is used in a Dari sentence, it is shown in non- <i>italics</i> enclosed in quotation marks. (Example: ID144: "OK, one, OK slowly, I said..., " <i>where did the truck come from?</i>)
< >	Description of what the author judged to be relevant non-verbal behavior of the interlocutor for the given utterance.
<< >>	Description of what the author judged to be relevant surrounding information, e.g. other participants' verbal/non-verbal behavior occurring concurrently in the background.
[]	Words that were not actually rendered but abbreviated, though obviously meant and thus were filled in. (Example: ID004: [<i>The video machine is</i>] <i>for checking</i> .)
" <i>nafgh bad</i> "	An original Dari word that appears in Interpreter's English translation is shown in <i>italics</i> and put in quotation marks, without an accompanying translation except when it is necessary. (Example: I013: Just on a correction, I asked what's the word " <i>nafgh bad</i> ," so he explained "gas.")
" <i>Nafgh bad</i> (gas)"	A key Dari word in the English check-translation of the utterances originally rendered in Dari (Suspect's utterances, Interpreter's translation of Police Officer's utterances into Dari, and Interpreter's own utterances in Dari) is put in the original Dari language, enclosed in quotation marks immediately followed by its English translation in non-italics enclosed in parentheses. (Example: S084: " <i>Nafgh bad</i> (gas)" <i>is produced and it hurts my stomach, and...</i>)

C. Annotation Markers

X001	Utterance in an extra round-trip in Dari without excuse or explanation in
------	---

	English.
X001	Utterance in an extra round-trip in Dari with excuse or explanation in English.
X001	Utterance in an extra round-trip in English without excuse or explanation in Dari
X001	Utterance in an extra round-trip in English with excuse or explanation in Dari
he / he	Third-person pronoun, instead of first-person, used to refer to the other party, with a footnote annotation given in the following 3 categories: 1) Police Officer Using “He” for Suspect, 2) Interpreter Using “He” for Suspect, and 3) Interpreter Using “He” for Police Officer.
you	Second-person pronoun used by Suspect to address his statement to Interpreter. ³⁵⁷
(RG1)	Translation with a “Register” issue with cumulative numbering and a footnote annotation.
<u>Xxx</u> (RD1)	Translation with a “Reduction” issue with cumulative numbering and a footnote annotation. The parts in the preceding Dari utterance which were “Reduced” in the following English translation are underlined.
<u>Xxx</u> (OM1)	Translation with an “Omission” issue with cumulative numbering and a footnote annotation. The parts in the preceding Dari utterance which were “Omitted” in the following English translation are underlined.
<u>Xxx</u> Yyy (AD1)	Translation with an “Addition” issue with cumulative numbering and a footnote annotation. The preceding, original Dari utterance is underlined, and the “Addition” in the following English translation is shadowed in gray.
<u>Xxx</u> Yyy (AL1)	Translation with an “Alteration” issue with cumulative numbering and a footnote annotation. The preceding, original Dari utterance is underlined, and the “Alteration” in the following English translation is shadowed in gray.

D. Four Turn-Taking Cycle Pattern Markers

³⁵⁷ For detailed explanation on these pronoun switches and footing shifts, see Chapter XII, B, *supra*.

P001	Police Officer's utterance code number that begins each new turn-taking cycle is shown in gray-color shadow.
(2S 001)/ (3S 001)/ (4S 001)/ (OS 001)	At the end of every Police Officer's utterance that started a new turn-taking cycle, a "Turn-Taking Cycle Pattern" category with cumulative numbering is shown inside gray-color-shadowed parentheses. The following abbreviations are used for each category. ³⁵⁸ "2S" for "2-Step Unilateral," "3S" for "3-Step Untranslated," "4S" for "Full 4-Step Q-&-A," and "OS" for "Officer Interrupted by Suspect."
<u>P001</u>	Police Officer's utterance code number that does not begin a new cycle (e.g. untranslated nodding or affirmation, often addressed to Interpreter) and thus appears in the middle of a cycle is underlined and non-shadowed.

³⁵⁸ For detailed explanation of these four "Turn-Taking Cycle Pattern" categories, please see Chapter XI, C, *supra*.

SCENE 1 (Police Caution) ***17:37 minutes (02:13-19:50)**

P001: Right here. Please sit down. (2S 001)

ID001: Please sit here.

P002: <pointing to an IC audio-recorder after putting it on the center table> Now, this is an audio-recorder. (4S 001)

ID002: *[We will] check if the audio-recorder is OK.*

S001: <in a nodding tone> “*Baleh (Yes).*”

IE001: Yes.

P003: This machine. There’s also a video machine, (2S 002)

ID003: *There is also a video machine.*

P004: <looking up at and pointing to the video camera> if you see up in the ceiling, (2S 003)

ID004: *[The video machine is] for checking.*

P005: that is turned on, (3S 001)

ID005: *The video machine is on.*

S002: “*Baleh (Yes).*”

P006: to protect any question that...we have said something we have not said. (4S 002)

ID006: *We will record any questions that we will ask.*

S003: <turning to the interpreter> *I must ask my lawyer.*

IE002: Should talk to my lawyer, Sir. (RG1)³⁵⁹

P007: I know that he spoke to a lawyer, and I..., that is a private conversation, and not something that I want to discuss with him³⁶⁰ at this point. (2S 004)

ID007: *I understand that the talk between you and your lawyer is private, and I do not*

³⁵⁹ Register 1: The addition of a politeness register “sir” in IE002 changed the politeness tone of S003, as was explained in Chapter XII, F, *supra*.

³⁶⁰ Police Officer Using “He” for Suspect: #1

want to discuss that talk.

P008: This is... <taking out his police ID to show to the suspect, but interrupted by the suspect> (OS 001)

S004: <interrupting the police officer, looking at the interpreter> *What should I say? I don't know. Please talk to my lawyer.*

IE003: Should also speak with my lawyer. I cannot say anything.

P009: I understand, (2S 005)

ID008: *I understand,*

P010: that he has had a conversation with his³⁶¹ lawyer. (3S 002)

ID009: *that you talked with your lawyer.*

S005: *"Baleh (Yes)."*

P011: It is his³⁶² right, (3S 003)

ID010: *It is your right,*

S006: *"Baleh (Yes)."*

P012: under the constitution of this country, (2S 006)

ID011: *under the law in this country,*

P013: not to talk to me. (2S 007)

ID012: *under the constitution of this country, you have a right not to talk to me.*

P014: Does he³⁶³ understand this? (4S 003)

ID013: *Do you understand this?*

S007: <nodding> *"Baleh (Yes)."*

IE004: Yes, I know.

P015: This is my identification. (4S 004)

³⁶¹ Police Officer Using "He" for Suspect: #2

³⁶² Police Officer Using "He" for Suspect: #3

³⁶³ Police Officer Using "He" for Suspect: #4

ID014: *This is my ID.*

S008: *I don't understand it. I can't read it.*

IE005: *I cannot read the, the letter.*

P016: Just so he³⁶⁴ knows that I'm a policeman. (3S 004)

ID015: *I want to tell you that I am a policeman,*

S009: *"Baleh (Yes)."*

ID016: *...a member of the police.*

P017: I'm Detective Barsky. (2S 008)

ID017: *My name is Barsky. <<The suspect nods.>> I am a police detective.*

P018: This is Detective Code. <<Detective Code leans forward toward the suspect to show his ID.>> (3S 005)

ID018: *This is Detective Code.*

S010: <nodding a couple of times looking at Detective Code's ID> *"Baleh (Yes)."*

P019: We work in the Toronto Police Homicide Squad. (4S 005)

ID019: *Both of us work for the Toronto Police.*

S011: <in a slightly higher and forceful pitch, looking at the interpreter> *Please talk with my lawyer. What should I say? I don't know anything.*

IE006: *If you want to talk anything, you can talk to my lawyer.*

P020: As I said before, it is his³⁶⁵ right not to answer my questions. (3S 006)

ID020: *As I said before, it is your right not to talk to me.*

S012: <cutting in just before the police officer begins the next sentence, raising both hands up, shaking his head slightly> *I can't...*

P021: But it is... <pauses as the suspect kept talking> (OS 002)

S013: <continuing from S012> *...talk anything. I'm under nervous stress.*

IE007: *I can't talk anything. I'm not normal. My brain does (sic) not working.*

³⁶⁴ Police Officer Using "He" for Suspect: #5

³⁶⁵ Police Officer Using "He" for Suspect: #6

P022: <softly interrupting the suspect, who is still mumbling> Before..., before we say anything, about anything, I'd like to just explain why we are here.
(4S 006)

ID021: *Before we talk, I want to explain to you why we have come here.*

S014: *I don't know anything at all.*

IE008: I don't know. I don't know.

P023: The gentleman in the corner, off the camera, is an interpreter, (2S 009)

ID022: *This person over here is an interpreter.*

P024: who is not a policeman, (2S 010)

ID023: *[He is] not a policeman.*

P025: and not a lawyer, (2S 011)

ID024: *not a lawyer, either,*

P026: and not employed by the Toronto Police. (4S 007)

ID025: *and does not work for the police.*

S015: <nodding> "Baleh (Yes), baleh (yes)," I know that.

IE009: I know that.

P027: He is employed by a separate company, (2S 012)

ID026: *He works for a different company.*

P028: and we have asked him to come here today to assist with translation. (4S 008)

ID027: *We have asked him to come here to do interpreting.*

S016: <to the interpreter> *Thank you very much. I don't know the language. I don't know English. I don't know any other language except Dari.*

IE010: Thank you very much for you[r] coming here, and as I said I don't know English, except Dari.

P029: When you came to the police station today, (3S 007)

ID028: *When you came to the police station today,*

S017: "Baleh (Yes)."

P030: a number of policemen had contact with you, (4S 009)

ID029: *several policemen were with you,*

S018: “*Baleh (Yes).*”

IE011: Yes.

P031: and spoke to you. (4S 010)

ID030: *and spoke with you.*

S019: “*Baleh (Yes),*”...

IE012: Yes, ... <interrupted by the suspect, who is still continuing>

S020: *I didn't know that I was talking without a lawyer.*

IE013: Yes, my lawyer didn't know about this, and they spoke to me without the knowledge of my lawyer. (AL1)³⁶⁶

P032: Some of the... <interrupted by the suspect> (OS 003)

S021: <interrupting the police officer, using hands, in a higher, stronger pitch> *My lawyer had not come yet, and the police asked me many questions. I asked them to get me someone who understood Dari, [and that] I wanted to talk to that person. They asked me if I understood Hindi. I said I didn't know any Hindi.*

IE014: I told them I don't know any other language, and I know only Dari. They keep (*sic*) saying that (*sic*) Hindi, Hindi. I said, “No, I don't know any Hindi.” (RD1)³⁶⁷

ID031: <extending his right hand and lightly touching the suspect's chair's left armrest> *You don't know Hindi. Right?*

S022: *Right. I don't know much Hindi.*

IE015: Yes, I don't know a lot of Hindi.

³⁶⁶ Alteration 1: “*I didn't know that I was talking without a lawyer*” in S020 was altered to “my lawyer didn't know about this, and they spoke to me without the knowledge of my lawyer” in IE013. When the described incident was happening, the suspect had neither spoken to nor retained a counsel yet, so the altered expressions “my lawyer didn't know about this” and “without the knowledge of my lawyer” with a possessive pronoun determiner “my” (instead of an indefinite article “a”) in IE013 have changed the implied facts.

³⁶⁷ Reduction 1: IE014 reduced S021 by not rendering “*[m]y lawyer had not come yet, and the police asked me many questions. I asked them to get me someone who understood Dari, [and that] I wanted to talk to that person,*” though the pragmatic meaning is more or less retained contextually by the preceding exchange starting from P029.

P033: I understand that some officers were English, (2S 013)

ID032: *I understand some police officers were English-speaking.*

P034: and one officer, in particular, was an officer who spoke Hindi. (4S 011)

ID033: *One police officer was special and spoke Hindi.*

S023a: <in a rather strong tone, continuing without pausing for the interpreter to start translating> *Yes, this officer asked me many questions in Hindi, and I told him I did not understand him at all. I told him I could not talk with him. I...*

IE016: Yes, ... yes, I..., <unable to start as the suspect would not pause>

S023b: <continuing without allowing the interpreter to start translating> ...*didn't know the law in this country. I didn't know that I should not speak without a lawyer.*

IE017: Yes..., erm...,

I001: <to the police officer> I'll try my best.

IE018: Yes, I know, I didn't know about that, and I didn't know that, I didn't know lawyer., I should not speak to., and I didn't understand Hindi, either. (OM1)³⁶⁸

P035: OK. The Hindi officer tells me in English, (3S 008)

ID034: *The Hindi officer has told me in English,*

S024: *"Baleh (Yes)."*

P036: that he explained to you, (2S 014)

ID035: *[that] he explained to you,*

P037: in Hindi, (2S 015)

ID036: *in Hindi,*

P038: your rights to counsel, (4S 012)

ID037: *that you have a right to a lawyer.*

S025: *Yes, he said [that].*

IE019: Yes, ... <pauses to let the suspect continue>

³⁶⁸ Omission 1: "*I...didn't know the law in this country. I didn't know that I should not speak without a lawyer*" in S203b was omitted from IE018, due to the lack of clear rendition.

S026: <continuing> *My lawyer should be here.* *You*³⁶⁹ *came here, and I talked with my lawyer.*

IE020: Yes, he said that, and after you came here, I spoke with the lawyer. (OM2)³⁷⁰

P039: And this officer who spoke Hindi told me, (2S 016)

ID038: *The Hindi officer has told me in English,*

P040: that you understood your rights. (4S 013)

ID039: *that you understand your rights.*

S027: <shaking his head slightly> *I don't know the law in this country at all.*

IE021: As I mentioned, in fact, I don't know anything about the law in this country.

P041: Which part of what the officer said do you not understand? (4S 014)

ID040: *Which part of what the officer told you did you not understand?*

S028: *He asked me to tell him what was the matter, and I told him I could not answer [his questions] because I could not understand him.*

IE022: He would keep insisting that (*sic*) "tell me what was the matter," and I told him that (*sic*) "I cannot say,"

ID041: *And after that? And after that?* <prompting the suspect to say more or continue>

S029: <in a stronger pitch, sounding irritated> *I don't know the language.* *I'm telling the truth.*

IE023: and even though he insisted that (*sic*) "I do not understand," and I'm telling the truth. (AL2)³⁷¹

P042: OK. (2S 017)

ID042: "OK."

P043: I would like to go back to those rights, (2S 018)

³⁶⁹ Suspect Using "You" for Interpreter: #1

³⁷⁰ Omission 2: "*My lawyer should be here*" in S026 was omitted from IE020.

³⁷¹ Alteration 2: "*I don't know the language*" in S029 was altered to "and even though he insisted that (*sic*) 'I do not understand'" in IE023, most probably due to a syntactic error in the target language rendition.

ID043: *I want to go back to your rights.*

P044: so that you are certain that you understand what the laws in our country mean and say. (4S 015)

ID044: *so that you will understand the law in our country and what it says.*

S030: *Yes, I should know that.*

IE024: Yes, I should know that.

P045: The officer told you you have the right to retain and instruct counsel. (4S 016)

ID045: *The officer told you that you have a right to have a lawyer,*

S031: *“Baleh (Yes).”*

ID046: *to consult him.*

S032: *Yes, he said, and...*

IE025: Yes, yes, he said that.

S033: <continuing> *Already, before this interview, you³⁷² came, and I talked with my lawyer.*

IE026: Yes, when my lawyer spoke to me, when you, he's pointing to the interpreter, when you came in, and he talked to me.

P046: And does he³⁷³ understand what that means? (4S 017)

ID047: *Do you understand what he said?*

S034: <in a stronger pitch> *As I said earlier, I don't know the law in this country, and my lawyer knows it.*

IE027: As I said earlier, that (*sic*) I do not understand, I don't know about the law in this country, and the lawyer knows about it.

P047: OK, (2S 019)

ID048: *OK.*

P048: but do you know what “retain and instruct counsel” means? (4S 018)

ID049: *Do you know what getting a lawyer and consulting a lawyer means?*

S035: *If I get a lawyer, I can consult him and he defends my right.*

IE028: To retain lawyer and to instruct the lawyer means that the lawyer defends my

³⁷² Suspect Using “You” for Interpreter: #2

³⁷³ Police Officer Using “He” for Suspect: #7

right.

P049: Yes, (2S 020)

ID050: *Yes.*

P050: but also, (2S 021)

ID051: *but also,*

P051: “retain” means to “hire a lawyer.” (4S 019)

ID052: “*Retain,*” *to get a lawyer means you hire a lawyer.*

S036: *To hire a lawyer, you³⁷⁴ told me earlier, means that a lawyer will come. I’m not very literate. A Dari interpreter will also come. The Dari interpreter will ask me questions, and I will respond, and the interpreter will tell this to the lawyer.* (OM3)³⁷⁵

I002: <to the police officer> Excuse me,

P052: Yes?

I003: I don’t want to ...,

ID053: <to the suspect> *Could you repeat from the beginning?*

S037: *Already, before this interview, you³⁷⁶ came, and my lawyer also came. I’m not very literate, ...*

IE029: Earlier, you said that tomorrow when we go to the court, (AL3)³⁷⁷

ID054: “OK,” <to the suspect> *When we go to the court,*

S038: <leaning towards the interpreter, as if to ensure his understanding> *Earlier*

³⁷⁴ Suspect Using “You” for Interpreter: #3

³⁷⁵ Omission 3: The details such as “*I’m not very literate*” and “[t]he Dari interpreter will ask me question, and I will respond, and the interpreter will tell this to the lawyer” in S036, which was also repeated in S037 were omitted from IE030.

³⁷⁶ Suspect Using “You” for Interpreter: #4

³⁷⁷ Alteration 3: IE029 was not a translation of S037 but was more like a flow readjustment, leading the suspect to refocus, with more cohesion, on what he had been told earlier as an arrangement for the following day in court, i.e. that a counsel and an interpreter would be provided for him. Only after giving IE029, the interpreter gave the same sentence in Dari to the suspect in ID054, both of which were actually “authored” by the interpreter, using Goffman’s terminology. See Chapter IX, B-2, *supra*.

*you*³⁷⁸ told me that when we go to the court tomorrow, a lawyer will come, and a person who understands my language, the Dari language, will also come.

IE030: there would be a lawyer present, and also a person who could (*sic*) interpret, who could (*sic*) know my language, would be present tomorrow.

P053: That's correct. (4S 020)

ID055: "OK," *And after that?* <prompting the suspect to continue>

S039: *That's all.*

IE031: That's it.

P054: But it means also that if you cannot afford to pay for a lawyer yourself, the province, the government will pay for a lawyer for you at no cost to you.
(4S 021)

ID056: *It also means that if you cannot pay for the lawyer yourself, this country will pay for your lawyer.*

S040: <to the interpreter> Yes, *you*³⁷⁹ told me that. *I don't have any money. I don't have anything.*

IE032: Yes, you told me that, and I don't have any money.

S041: *You*³⁸⁰ told me that, and thank you very much.

IE033: That, you told me that. That's correct. Thank you very much.

P055: And does *he*..³⁸¹ do you understand that? (4S 022)

ID057: *Do you understand this well?*

S042: *"Baleh (Yes)."*

IE034: Yes.

S043: *Since you*³⁸² *have explained it to me, I understand it now.*

IE035: Since you've told me that now, I understood.

³⁷⁸ Suspect Using "You" for Interpreter: #5

³⁷⁹ Suspect Using "You" for Interpreter: #6

³⁸⁰ Suspect Using "You" for Interpreter: #7

³⁸¹ Police Officer Using "He" for Suspect: #8

³⁸² Suspect Using "You" for Interpreter: #8

P056: And to “instruct counsel” means that your right is to give direction to your lawyer, to your counsel. (3S 009)

ID058: *To “instruct” means, for instance, that the lawyer... <a slight pause>*

S044: *“Baleh (Yes).”*

ID059: *that [we] will give you a right and will defend you, ...*

S045: *“Baleh (Yes).”*

I004: Can you just please, Officer Barsky, can you repeat that... to “instruct” means...

P057: “To instruct” means that it is his right to give direction to his³⁸³ lawyer. (4S 023)

ID060: *“To instruct” means you have a right to tell your lawyer what to say or what to do.*

S046: *Yes, if the lawyer says what I say, it is fine. He writes what I tell him, and the lawyer knows what he should do.*

IE036: I understand that “to instruct” means that I give him the provision to do work for me, and whatever I say he writes.

P058: Yes, (2S 022)

ID061: *Yes.*

P059: but because he...,³⁸⁴ you were in a police station, (3S 010)

ID062: *You are now in a police station,*

S047: *“Baleh (Yes).”*

P060: and you have been arrested, (3S 011)

ID063: *and you have been arrested,*

S048: <almost inaudibly> *“Baleh (Yes).”*

P061: for murder, (3S 012)

ID064: *for murder.*

³⁸³ Police Officer Using “He” for Suspect: #9

³⁸⁴ Police Officer Using “He” for Suspect: #10

S049: “*Baleh* (Not necessarily ‘yes’).”³⁸⁵

P062: and other officers, other than my partner and myself, have spoken to you,
(3S 013)

ID065: *Other officers, except me and my partner, have spoken with you.*

S050: <nodding a couple of times> “*Baleh* (Yes).”

P063: I don’t want, anything they have said to you, to make you think, that you need
to talk to me. (2S 023)

[I005]: <to the officer> Ah..., I don’t understand this word...

[P064]: I don’t want anything that the officers have said to him to make him think that
he needs to talk to me, to influence him³⁸⁶ to talk to me. I don’t want that to
happen. (2S 024)

[I006]: <to the police officer> OK, so whatever other officers told you..., ah
whatever
other officers spoken (*sic*) to him doesn’t mean that you are, you have told
him?³⁸⁷ So, I don’t understand this part.

[P065]: <moving forward in his chair> The other officers that had contact with you
here, (2S 025)

ID066: *The other officers have spoken with you here.*

P066: I don’t want that contact, that talking, (3S 014)

I007: OK,

ID067: *The talk that they had with you,*

S051: <nodding> “*Baleh* (Yes).”

P067: to make you think that you need to talk to me. (4S 024)

ID068: *does not require you to tell me the same as what you told them.*

³⁸⁵ The Dari word “*baleh*” has a broader meaning than the English word “yes,” and it can also mean “Yes, I have comprehended what you have said though my answer is negative.”

³⁸⁶ Police Officer Using “He” for Suspect: #11

³⁸⁷ Interpreter Using “He” for Suspect: #1

S052: *I will talk, but I said without my lawyer I don't know what to say.*

IE037: *I will talk, but since my lawyer's not here, how can I talk?*

P068: It is his³⁸⁸...your right, (2S 026)

ID069: *It is your right,*

P069: not to talk to me. (2S 027)

ID070: *not to talk to me. It is your right not to talk to me.*

P070: But the highest court in our country, (2S 028)

ID071: *But the court in our country,*

P071: the Supreme Court of Canada, (2S 029)

ID072: *the Supreme Court of Canada, the highest court in Canada,*

P072: tells me, as the investigator, (2S 030)

ID073: *tells me,*

P073: that I can ask you any question that I believe is relative. (4S 025)

ID074: *that I have a right to ask any questions that are related to this incident.*

S053: *If my lawyer tells me to talk, I will talk.*

IE038: *If my lawyer allows me to say or talk, I will do that.*

P074: It is your right to decide whether you talk to me or not. (4S 026)

ID075: *It is your right to decide whether you talk to me or not.*

S054: *I cannot talk without my lawyer.*

IE039: *Without the lawyer, I cannot say anything.*

Scene 2 (Prescriptions)*****14:63 minutes (19:50-34:13)

P075: After you spoke to your lawyer, (3S 015)

ID076: <reaching for a bottle of water placed on the floor and getting a quick sip>

³⁸⁸ Police Officer Using "He" for Suspect: #12

After you spoke with your lawyer,

S055: *"Baleh (Yes)."*

P076: you asked for some medicine. (4S 027)

ID077: <putting the bottle back on the floor> *You asked for "dava (medicine)."*

S056: *"Baleh (Yes)."*

IE040: Yes.

P077: When you came to the police station, (4S 028)

I008: <interrupting the police officer> Let me correct that, please.

P078: I'm sorry?

I009: Because, because I said something different.

ID078: <to the suspect> *When you talked to your lawyer,*

S057: *"Baleh (Yes)."*

ID079: <to the suspect> *did you asked for "davayet (your own medicine)"?*

S058: *"Baleh (Yes), davabejeman (my medicine)."*

I010: OK, I've just corrected, because I said, "You asked for medication,"

P079: Instead of "medicine"?

I011: Yes.

P080: OK, perhaps medication is a better term.

I012: *"Dava (medicine)," yes.*

P081: Erm..., that you believed that we had here, (4S 029)

ID080: *You thought we had that medicine here, that your medicine had been brought here.*

S059: <shaking head> *No, I didn't think that.*

IE041: No, I didn't think that.

P082: Perhaps that's my mistake. (4S 030)

ID081: *Perhaps it is my mistake.*

S060: *No, I didn't think that. "Dava (medicine)" is at home.*

IE042: I didn't think that. The medication is at home.

P083: OK. (2S 031)

ID082: *OK.*

- P084: This medicine, is for what? (4S 031)
- ID083: *What is that “dava (medicine)” for?*
- S061: *One is for my “sar (head).”*
- IE043: One is for my psychotic,
- S062: *One is for sleeping.*
- IE044: one is for sleeping,
- S063: *Another one is for pain from “nafgh bad (gas in the bloated stomach).”*
- IE045: one is for my stomach...erm, this pain, and “*hast in* (for this),” (OM4)³⁸⁹
- S064: *And another one is for “ghabziat (indigestion causing constipation).”*
- IE046: and one is for constipation.
- S065: *There are five types of medicine.*
- IE047: There are five types of medication.
-
- P085: Do you take this medicine every day? (4S 032)
- ID084: *Do you take this medicine every day?*
- S066: *For the last one year, I’ve been taking this medicine.*
- IE048: For the last one year, I’ve been taking this.
-
- P086: Every day? (4S 033)
- ID085: *“Har roz (Every day)”?*
- S067: *“Har roz, baleh (Every day, yes).”*
- IE049: Yes, every day.
- S068: *At night I take two sleeping pills.*
- IE050: At night, I take two sleeping pill (*sic*),
- P087: Yes.
- S069: *The stomach medicine, I take two in the morning, two at lunch time, and two at night.*
- IE051: The stomach medication, I take two in the morning, two at lunch time, and two at dinner time.
- S070: *And there is another medicine. The doctor told me to take one in the morning and one at night.*
- IE052: And there’s another medication or medicine, I take one in the,

³⁸⁹ Omission 4: “[N]afgh bad (gas in the bloated stomach)” in S063 was omitted from IE045, leaving the cause of the “stomach pain” unknown. This omission, however, was recovered later in the correction made by the interpreter in I013.

ID086: <confirming> *One in the morning, and one at night?*

S071: *In the morning and at night.*

IE053: one in the morning, and one at night.

P088: And what is that medication? (4S 034)

ID087: *What is this medicine for?*

S072: *This is also for my stomach.*

IE054: That is also for the stomach.

P089: OK, continue. (4S 035)

ID088: *OK, continue.*

S073: <in a strong, clear voice> *Another medicine is for “ghabziat (indigestion causing constipation).” The doctor said this medicine will help me control myself by making my stomach feel better.*

IE055: OK, the other one is for the constipation. The doctor told me to take it to control myself, my constipation.

P090: OK. (2S 032)

ID089: *OK.*

P091: What other medicine? (4S 036)

ID090: *Any other medicine?*

S074: *That’s all. There’s no other medicine.*

IE056: That’s it. There’s no other medication.

P092: I didn’t hear you speak of medication for your head. (4S 037)

ID091: *He³⁹⁰ said you didn’t talk about the medicine for your “sar (head).”*

S075: *I’ve mentioned the medicine for my “damagh (head).” I told the police, too.*

IE057: I said that for my brain. I in... told the police.

P093: When does he³⁹¹ take... <pauses as interrupted by the suspect> (OS 004)

S076: *I take one in the morning and one at night. It’s [a] long [tablet].*

ID092: *This is for the “sar (head)”?*

³⁹⁰ Interpreter Using “He” for Police Officer: #1

³⁹¹ Police Officer Using “He” for Suspect: #13

S077: *It is "sar (head)."*

ID093: *For the "sar (head)"?*

S078: <nodding> *Yes.*

IE058: *The..., my psychotic medication is one for the morning, and one for the night.*

P094: *And did he³⁹² take all of these medications yesterday?* (4S 038)

ID094: *Did you take all these medicines yesterday?*

S079: *Yes, I took one this morning, too.*

IE059: *Yes, even today I took one.*

P095: *OK, all of the medications that he³⁹³ was supposed to take up to that point of today?* (4S 039)

ID095: *All of the medicines you are supposed to take,*

S080: *"Baleh (Yes)."*

ID096: *You have taken them all up to today?*

S081: *"Baleh (Yes)."*

IE060: *Yes.*

P096: *And what happens if you don't take your stomach medication?* (4S 040)

ID097: *What happens if you don't take your stomach medicine?*

S082: *I will get "nafgh bad (gas causing a bloated stomach)."*

ID098: *What is "nafgh bad"?*

S083: *"Nafgh bad" is "gaaz (gas)."*

ID099: *Ah...*

S084: *"Nafgh bad (gas)" is produced and it hurts my stomach, and it also comes to my head [to cause a headache].*

I013: *Just on a correction, I asked what's the word "nafgh bad," so he explained "gas."*

S085: *Gas.*

IE061: *If I don't take that, gas will be produced,*

P097: *Yes.*

IE062: *It will...*

³⁹² Police Officer Using "He" for Suspect: #14

³⁹³ Police Officer Using "He" for Suspect: #15

ID100: *come to your “sar (head)” to cause a headache?*

S086: *“Baleh (Yes).”*

IE063: It will “ahead to (*sic*)”³⁹⁴ my head.

P098: OK.

IE064: Will “affect” my head.

P099: Affect, you said.

P100: And what about the other medications? (4S 041)

ID101: *How about other medicines?*

S087: *Other medicines? If I take them, I will be OK.*

IE065: The other medication..., if I take them...,

S088: *The other medicines the doctor gave me,*

IE066: ...I will be OK. <interrupted by the suspect>

S089: *if I take them I’ll be OK.*

IE067: All these other medicines that the doctor prescribed, I will be OK.

S090: *The doctor said another thing. I must take the medicine at eight o’clock and go to bed at eight o’clock.*

IE068: But the doctor also told me that I should take medication at eight o’clock and I go to bed at eight o’clock.

P101: So the only medicine you must take, every day, is for the gas. (4S 042)

ID102: *The only medicine you must take is the one for the gas?*

S091: *“Baleh (Yes).”*

IE069: Yes.

S092: <explaining in a strong voice, using fingers for counting> *I take two in the morning, two at lunch time, and two at night. There are two types that have been given me. One, I take two in the morning, two at lunch time, and two at night, right? So there are six in total. The other one, I take two, one in the morning and one at night. This is for the gas.*

IE070: Yes, this, two types of medications; one, I take two in the morning, two at lunchtime, and two at dinner time...at night time. And there’s also another one that I take two, one in the morning, one at night. Both of them are for stomach.

³⁹⁴ This is only a phonetic representation of what was obviously mis-phrased and was corrected in IE064.

ID103: *Both of them are for the stomach?*

S093: *Yes, they are both for the stomach.*

ID104: *One, you take two in the morning, two at lunch time, and two at night...*

S094: *<in a stronger voice as if to make sure that the interpreter understands this time> There are two types. One, I take two in the morning, two at lunch time, and two at night. The other one, I take two: one in the morning, one at night.*

IE071: *There are two types. One I take six a day, another one I take two a day.*

P102: *And these are all for the stomach? (4S 043)*

ID105: *And are they all for the stomach?*

S095: *Yes, they are all for the stomach, my "asab (nerve/brain)," and for "khab (sleep)."*

IE072: *Yes, they are all for my stomach and for my psychotic, for my brain, and for sleeping, the other one.*

P103: *OK. Tell me about the one for your brain. (4S 044)*

ID106: *Tell me about the one for your "maghz (brain)," your "asab (nerb/brain)."*

S096: *The doctor told me to take two at night.*

IE073: *For the psychotic one, for my brain, the doctor told me to take it at night time.*

ID107: *Two?*

S097: *One in the morning and two at night.*

ID108: *One in the morning and two at night?*

S098: *"Baleh (Yes)."*

IE074: *He told me to take one in the morning, and two at night.*

P104: *And what is this for? (4S 045)*

ID109: *What is this for?*

S099: *This is for my "asab (nerb/brain)."*

IE075: *For my brain, for my psychotic.*

P105: *What does the doctor say is wrong with your brain? (4S 046)*

ID110: *What did the doctor say is wrong with your brain?*

S100: *The doctor said I think/worry too much, [and that] my "fekr (thinking)" gets affected by the gas in the stomach.*

IE076: It's...er, <pauses approximately 4.9 seconds> it's the gas from your stomach affects your brain to operate properly. So affects your brain in...

P106: What does the doctor call this sickness? (4S 047)

ID111: *What is this sickness called?*

S101: *He didn't tell me anything.*

IE077: He didn't tell me.

P107: How long have you taken medicine for this? (4S 048)

ID112: *How long have you been taking this medicine?*

S102: *I said one year.*

IE078: I told you one year.

P108: And in that year, have you ever missed taking that medicine (4S 049)

ID113: *During this past one year, have ever missed taking this medicine?*

S103: *My doctor goes to India twice a year. His name is Naghib.*

IE079: My doctor is, name is Naghib. He goes to India twice a year.

S104: *For a vacation.*

IE080: *On vacation.*

S105: *This doctor has given me the medicine, but sometimes he didn't give me [the medicine]. I didn't have the medicine while the doctor was away. I didn't go to another doctor, because this doctor is my "famil (relative)."*

IE081: When he goes to vacation, as...., I....,

I014: <to the police officer> Excuse me,

ID114: *When this doctor is away, you don't go to a different doctor to get the medicine?*

S106: *No, I don't go to a different doctor.*

IE082: When he's not here, I don't go to anybody else to take that medication.
(OM5)³⁹⁵

P109: How long would you go without that medication? (4S 050)

ID115: *How long can you stay all right without this medicine?*

S107: *Without this medicine, I can remain all right for only one or two days.*

³⁹⁵ Omission 5: "[B]ecause this doctor is my "famil (relative)" was omitted from IE081 and IE082. While this particular reason may not have been a crucial part of the response to the given question, the deletion of this logic element made the target language rendition not completely equivalent.

IE083: The longest I could...go without it is one or two days.

P110: And then what happens? (4S 051)

ID116: *What happens then?*

S108: *My "fekr (thinking)" becomes bad. My stomach gets bloated with gas.*

IE084: I just...control...

I015: No..., it's difficult this part...

P111: Hmm.

I016: Difficult...erm...'cuse me for a second...,

IE085: The gas affects my..., my thought, my thinking, my brain, ...so I can't control, I get...

I017: No, no, not the word "control," excuse me...

ID117: <putting his right hand on the suspect's chair's armrest> *I'm sorry.*

IE086: Erm., I cannot think properly.

P112: What else does it do? (4S 052)

ID118: *What else are there? I said that the medicines...,*

S109: *"Baleh (Yes)."*

ID119: *the gas makes it difficult for you to think properly. Is this correct?*

S110: *My "fekr (thinking)" becomes bad.*

ID120: *Your "fekr (thinking)" becomes bad. << The suspect says "Baleh (Yes)" in the background.>>*

IE087: I just lose my thought of chain..., chain of thought.

P113: Yes. And then what happens? (4S 053)

ID121: *What happens after that?*

S111: *After that, I can't sleep at night.*

IE088: Even at night, I can't fall asleep.

P114: And what else happens? (4S 054)

ID122: *What happens after that?*

S112: *After that, I drink "doogh," and if I can sleep I sleep. If I can't sleep, I don't sleep.*

IE089: Then I just make a glass of a...

I018: It's a kind of drink called "doogh." It's made of yogurt. So just put water in,

and shake it to mix it together.

P115: Yes.

I019: That's called "*doogh*."

IE090: So I just make one of that and eat, drink it.

P116: And that helps? (4S 055)

ID123: *Does it make things better?*

S113: *Only a little.*

IE091: Very little.

P117: What else happens? (4S 056)

ID124: *What happens then?*

S114: *From the night until the next morning I just remain that way.*

IE092: I just spend the night till daylights.

P118: Nothing else happens? (4S 057)

ID125: *What else happens?*

S115: *I can't sleep.*

IE093: I don't fall asleep... <interrupted by the suspect>

S116: <continuing> *Gas bloats my stomach. I can't sleep. My "fekar (thinking)" gets bad.*

IE094: I produce more gasses in the stomach, and I don't fall asleep.

P119: But other than the gasses and losing your train of thought, nothing else happens to you? (4S 058)

ID126: *Other than the gas [bloating your stomach] and your "fekar (thinking)," anything else happens?*

S117: *No. I just can't sleep.*

IE095: I don't fall asleep.

P120: That's all. (4S 059)

ID127: *That's all.*

S118: *Yes.*

IE096: Yes.

P121: And how long would you go without falling sleep? (4S 060)

ID128: *Until when do you remain unable to sleep?*

S119: *From early in the evening until the next morning, I only sleep about an hour or half an hour.*

IE097: From the beginning of the night till morning, I sleep probably one hour or half an hour.

P122: So you're more tired, then? (4S 061)

ID129: *So you are very tired?*

S120: *That is my sickness. This is what this sickness does to me.*

IE098: This is the pro..., the..., the..., the..., this is the problem that causes me, that brings about this kind of tiredness.

P123: Does it make you sick? (2S 033)

ID130: *Does it...*

P124: To throw up, to vomit? (4S 062)

ID131: *Does it make you feel like vomiting?*

S121: *My stomach gets very painful, <gestures vomiting> and in the morning, my tongue tastes bitter like "zughal (charcoal)."*

IE099: Causes me to vomit, but also in the morning, when I wake up, my mouth is so...b[e]tter (*sic*).³⁹⁶

P125: Bitter?

I020: B-i-t-t-e-r.

P126: Yes.

I021: B[e]tter, did I pronounce...?

P127: Yes, that's exactly., thank you.

P128: Er, but nothing else? (4S 063)

ID132: *Nothing else?*

S122: <shaking head> *No. Nothing else.*

IE100: No.

³⁹⁶ Here, the word "bitter" was pronounced as "better."

Scene 3 (Past Traffic Accident) ***17:00 minutes (34:13-51:13)**

P129: When you came to the police station, (2S 034)

ID133: *When you came to the police station,*

P130: they told me, (2S 035)

ID134: *they told me,*

P131: on this report, (2S 036)

ID135: *on this report,*

P132: that you were involved in a car accident. (4S 064)

ID136: *that you were in a car accident.*

S123: “*Baleh (Yes).*”

IE101: Yes.

S124: <nodding and touching his right knee> *In a traffic accident, ...*

P133: And you have a sore leg. (4S 065)

ID137: *You have a sore leg.*

S125: *Yes, please give me a little time. I will explain the accident more completely and accurately.*

IE102: Please allow me to explain this traffic accident. (RG2)³⁹⁷

P134: Please. (4S 066)

ID138: *Please.*

S126: *I was coming from Scarborough,*

IE103: I was coming from Scarborough,

S127: *on a highway.*

IE104: on a highway,

S128: *I was on the right, first lane.*

IE105: on my right hand on a first lane.

S129: *Not on the collector, but on the express.*

³⁹⁷ Register 2: The phrase “allow me to” in IE102 changed the politeness tone of S125, making the original statement more courteous than it actually was, as was explained in Chapter XII, F, *supra*.

- IE106: Not on the collector, but on the express.
- P135: Yes.
- S130: My "motar (car)" suddenly got tired, and its speed went down.
- ID139: Were you driving?
- S131: Yes, I was driving.
- IE107: I was driving..., and suddenly my "engine (*motor*)" got slowed down. (AL4)³⁹⁸
- S132: I turned on my right-side emergency signal, turned it on, and tried to pull up my car on the right-side emergency lane, but then suddenly I heard behind my head "gharanboss"!³⁹⁹
- IE108: I turned on the signal, the emergency signal, and wanted to go to the emergency lane, and on the back I heard, "gharanboss."
- S133: Inside my car, there was a sound like a bomb-like explosion.
- IE109: It was like a..., exploded like, it was like the sound like a bomb...explosion.
- S134: My brain suddenly went up, I lost my consciousness, and then my brain got back to where it had been.
- IE110: My brain just got out of my head and this came back inside, and then...,
- S135: <putting his hands right below his left-side ribs> After I open my eyes, my belt was here, and...
- IE111: When I opened my eyes, my belt just hurt my ribs.
- S136: After I opened my eyes, I opened my door and saw a car of "ambulance police."
- IE112: When I opened my eyes, I noticed that ambulance and police.
- S137: <becoming more and more eloquent, using big gestures> I saw an ambulance car and a police car. I got on the ambulance and saw no car in front of or next to my car. When I saw over there, I saw a truck. It had hit the right side of my car from behind, where my car's back door was gone. (OM6)⁴⁰⁰

³⁹⁸ Alteration 4: "[M]otar (car)" in S130 was most probably mistaken for and mistranslated as "engine (*motor*)" in IE107, altering the factual description of the original. (In Dari, "motar" means a "car" and "motor" means an "engine," according to the check interpreter the author hired for this research.)

³⁹⁹ This onomatopoeic word was obviously used to signify a bomb-like explosion, but its exact pronunciation and spelling remain unknown.

⁴⁰⁰ Omission 6: "[W]here my car's back door was gone" in S137 was never recovered in the following section in which the suspect repeated his previous statements for the interpreter from IE113 all the way to IE121. As a result, this particular information that got omitted was never communicated to the interviewing police officer.

- ID140: *The truck hit your car from behind?*
- S138: *Yes, it hit my car from behind.*
- ID141: *And where did the truck go after that? Was it still behind?*
- S139: *When it hit my car.,*
- IO22: <to the police officer> Excuse me, one moment, I'll tell him...,⁴⁰¹ can,
- ID142: <to the suspect> *Your car got hit, and after that?*
- S140: *I said that it became a "gharanboss," like a bomb.*
- IE113: I said that there was "gharanboss" noise...; it's like a bomb.
- S141: *My brain went up and came back.*
- IE114: My brain was just displaced and came back.
- S142: *I became unconscious and came back.*
- IE115: [I was] unconscious, and I came back.
- S143: *When I became conscious,*
- IE116: When I became conscious,
- S144: *I opened my belt, I got my glasses, and saw the police...and ambulance.*
- IE117: I opened my belt, and I got my glasses, and I saw the ambulance...,
- ID143: "and police, too"? <in English though addressed to the suspect in a rising intonation>
- S145: <in a strong voice> *I don't know who called the ambulance, but I thanked whomever made the call. The ambulance was there, and it took me to the hospital.*
- IE118: I don't know who called the ambulance, but I said thank you, whoever called, the ambulance was present there.
- S146: *There was no car in front of or beside my car.*
- IE119: When I got up, got off, I didn't see any car in front of me, on this side of me.
- S147: <leaning on to the center table, showing directions and movements with hands, on top of the police officer's manila folder, as if it were a highway lane> *The truck came this way. My car was here. The truck went all the way like this and turned in this direction.*
- ID144: "OK, one, OK slowly, I said"..., <in English first and from here in Dari> *where did the truck come from?*
- S148: <in a strong voice, sounding excited> *The truck hit me from behind.*
- IE120: The truck hit me from behind,
- S149: <in a strong voice> *It hit my right side.*

⁴⁰¹ Interpreter Using "He" for Suspect: #2

- IE121: hit me on my right side,
- S150: <in a strong voice, sounding excited, leaning way forward over the center table, showing actual directions with hands on top of the table> *It went ahead all the way far up and turned around this way and crashed.*
- IE122: It went all the way like ahead, and then turned like this.
- P136: <referring to the audio-recorder placed on the center table to describe where the suspect's car probably had gone to after it had been hit> Like the tape-recorder. (4S 067)
- ID145: *Like the tape-recorder.*
- S151: *Yes, like the tape-recorder.*
- IE123: Yes.
- S152: *I saw the truck. It had gone all the way over there. My car was over here like this, and my car's wheel cap was over there near the truck.*
- ID146: <pausing the suspect> "OK,"
- IE124: I saw, I noticed my vehicle's (RD2)⁴⁰²
- I023: wheel caps (*sic*)...?
- P137: Yes.
- IE125: Was just...
- ID147: *was near the truck?*
- S153: *No, it was on this side.*
- IE126: Was on this side, and...
- ID148: *And what after that?*
- S154: *After that? Nothing after that.*
- IE127: And I didn't see anything else.
- S155: <in a strong voice, sounding eloquent> *I went to the hospital. I can't say this for sure but the police came in less than or a little more than half an hour.*
- IE128: OK, when I went to the hospital, I can't say this for sure when it was half an hour or one hour, the police came.
- S156: *The ambulance took me, and after that...*
- IE129: [The] ambulance took me, and after that the police came.
- S157: *...when I was on the "bestar (bed),"*

⁴⁰² Reduction 2: Some of the repetitive details in S152 such as "*I saw the truck. It had gone all the way over there. My car was over here like this*" were reduced, but the pragmatic meaning did not change very much as the information was contextually repetitive.

IE130: And I was on the bed.

S158: *the police asked me questions.*

IE131: Er, while on the stre... (RD3)⁴⁰³

ID149: <to the suspect> *Er, what is (what do you mean by) a “bestar (bed)”?*

S159: *It is a “chapelket mareez (patient’s bed).”*

IE132: I was on the bed. I was on the patient’s bed.

P138: And what did the police say happened? (4S 068)

ID150: *What did the police say?*

S160: <in a strong, confident voice> *The police told me that I was driving at 20 kilometers, and that my emergency was on.*

IE133: The police told me that you, I saw., your speedometer was 20 kilometers, and also I was told that your emergency light was on.

S161: <in a strong voice, confidently and eloquently> *The police told me that they had the truck driver’s insurance and asked me to show them my insurance, so I showed them my insurance and my driver’s license. The police wrote something on paper and handed it to me.*

IE134: He gave me, he told me that he got insurance from the truck driver, and he told me that he got my insurance, and he wrote some..., (AL5)⁴⁰⁴

ID151: *What did the police need?*

S162: *They wrote a note of my insurance, the truck driver’s license, and my license, and the plate number, and gave me the note.*

I024: OK, I’ll just repeat again, erm...,

IE135: His insurance, my insurance, his driver[’s] license, my driver[’s] license, <<The suspect says “number plate” in the background.>> and also the plate number...on a piece of paper and gave it to me. The police officer gave it to me.

S163: There were two officers.

IE136: *There were two police officers.*

⁴⁰³ Reduction 3: S158 “*The police asked me questions*” was not translated, but from the previous two renditions (IE128 and IE129), the contextual meaning that “after the suspect had been taken to the hospital, the police came later to see the suspect at the hospital” did not change.

⁴⁰⁴ Alteration 5: “[*The police*] asked me to show them my insurance, so I showed them my insurance and my driver’s license” in S161 was altered to “he told me that he got my insurance” in IE134, which has a different propositional or factual meaning.

S164: *I don't know English, so I showed with my hand like this, like this, like this.*

<moves his right arm like he did at that time>

IE137: I..., then no English, I was just saying that I was going this lane, on this lane, on this lane.

P139: Did they make sure you were OK? (4S 069)

ID152: Did they check and make sure you were OK?

S165: <in a strong voice, eloquently, looking at the interpreter> *I was on the bed. It was around one o'clock in the morning. No one knew I was at this hospital, so at around five o'clock I made a phone call but no one answered. Then they took me to where they take a photo (MRI) of my head, got my signature, put me into a machine, and took my head's photo (MRI).* (OM7)⁴⁰⁵

ID153: *Er..., was it one o'clock in the morning?*

S166: *Perhaps around one o'clock at the hospital.*

IE138: It was around one o'clock, and I didn't see...

S167: <interrupting the interpreter> *I didn't look at my watch.*

IE139: <trying to stop the suspect> I didn't see the watch, or the clock, around one o'clock, and after they took me there...,

I025: I have to ask him⁴⁰⁶ because I don't want to...say...something wrong...,

P140: Please.

I026: To the best of my ability.,

ID154: <to the suspect, touching his chair's armrest> *Excuse me, ...*

S168: *"Baleh (Yes)."*

ID155: *Could you... speak in short sentences one by one, so I won't mistranslate what you say or add something you didn't say?*

S169: *Sure, sure, I understand.*

ID156: *Er, they took you to the hospital around one o'clock in the morning. After that?*

S170: *They took me to the hospital around one o'clock.*

ID157: *"OK," after that?*

S171: *After that, they gave me a "serum" and after that nothing else.*

⁴⁰⁵ Omission 7: "No one knew I was at this hospital, so at around five o'clock I made a phone call but no one answered" in S165 was omitted and never got recovered in the following section, where the suspect repeated his previously given statements for the interpreter.

⁴⁰⁶ Interpreter Using "He" for Suspect: #3

- IE140: After they took me to the hospital, at one o'clock, they give (*sic*) me...
- I027: Er..., something like glucose, glucose "liquidadance"⁴⁰⁷ (*sic*), so it's...what's that called...er...
- P141: What does he⁴⁰⁸ call?
- I028: "Serum." <<The suspect also repeats the word "serum" in the background.>>
- P142: Yeah, that's fine.
- I029: Yes, "serum"..., <finally remembering> intravenous!
- IE141: So, they gave me the intravenous,
- ID158: "OK," *continue*.
- S172: *Then they gave me food.*
- IE142: Then then gave me any (*sic*) food.
- S173: *Then nothing until supper. Before supper around four o'clock, I tried many times to ask someone to telephone this number...* (OM8)⁴⁰⁹
- ID159: *Was it four in the morning or four in the afternoon?*
- S174: *Four in the afternoon.*
- IE143: At 2:00, until 4:00 p.m. next day,
- S175: *They told me to sign this paper to they could take a photo (MRI) of my head. They wanted to take a photo (MRI) of my head.*
- IE144: They told me to, they requested me to sign on this paper so we could take roentgen or X-ray of your head.
- S176: *I couldn't speak the language, but there was an Indian there, so I asked him to translate what they were saying so I would know what I should do.*
- IE145: I couldn't speak English, so there was an Indian. I asked him to go with me to see what they were saying, so... <interrupted by the suspect>

⁴⁰⁷ The exact lexical formation of this word remains unclear, and the spelling only reflects the perceived phonetic sound.

⁴⁰⁸ Police Officer Using "He" for Suspect: #16

⁴⁰⁹ Omission 8: Just as "No one knew I was at this hospital, so at around five o'clock I made a phone call but no one answered" in S165 was completely dropped in Omission 7, "[b]efore supper around four o'clock, I tried many times to ask someone to telephone this number" in S173 was also omitted. Consequently, the fact that the suspect most probably tried to contact his family many times, albeit unsuccessfully, was never communicated to the interviewing officer. While this may have only been a minor omission, if the police officer had obtained this piece of information, the officer's reaction later in P171, after the suspect responded that he did not know his home phone number, might have differed from just saying "Don't know?"

S177: *He had a patient, too. His small daughter was ill.*

IE146: They also had a patient there, (OM9)⁴¹⁰

S178: *Beside me.*

IE147: beside me.

P143: How long have you been driving for? (4S 070)

ID160: *How many years have you been driving for?*

S179: *I've been driving for about 40 years.*

IE148: About 40 years.

P144: How old are you now? (4S 071)

ID161: *How old are you?*

S180: *Sixty-one, or above sixty.*

IE149: Over sixty, almost sixty-one.

P145: Now..., <pauses approximately 2.3 seconds, looking at the suspect>
(OS 005)

S181: <quickly resumes before the police officer phrases his next question> *I have an Afghan license, an Indian license, and a license here.*

IE150: I have [an] Afghani license, [an] Indian license, and also have [a] Canadian license.

S182: <continuing> *In India...*

I030: Driver[’s] license, I mean.

S183: *I worked in a hospital, so I drove an ambulance and other vehicles. In Afghanistan, we drove on the right side, in India they drove on the left side, and here we drive on the right side.*

IE151: I had a..., I was in India, where I was working in a hospital, and I could drive any vehicle,

P146: Hum.

IE152: so I had a provision to drive any vehicle. (RD4)⁴¹¹ In Afghanistan, we were

⁴¹⁰ Omission 9: “*His small daughter was ill*” in S177 was omitted from IE146, thus making the meaning of “they” in “[t]hey also had a patient there” unclear (the Indian man’s family or the hospital?).

⁴¹¹ Reduction 4: “*I drove an ambulance and other vehicles*” in S183 was reduced to “I could drive any vehicle” in IE151 and “I had a provision to drive any vehicle” in IE151, though from the context it is not impossible to infer the same pragmatic meaning from the context.

driving on the right side. In India, they were driving on the left side. Here in Canada, we drive on the right side.

P147: So you are a good driver. (4S 072)

ID162: *You are a good driver.*

S184: <again speaking for a long time, without looking at the police officer> *Yes. Up till now I have had no accidents or got any tickets from the police. My son came to the hospital, at four o'clock, after they took my photo (MRI). I handed my insurance to him and told him that this [accident] was not my fault.*

IE153: Yes, I was a good driver, and up to today I didn't have any accident nor I had any tickets, and I told my sons, ..., told him to take the provisions to the insurance, and talk to them, and the police didn't, (OM10)⁴¹²

ID163: *The police didn't charge you?*

S185: *No.*

IE154: The police didn't charge me.

S186: <<The police officer tries but fails to cut in as the suspect continues without looking at him.>> *But when my son went to the police, they told him that the officer was on vacation for four days.*

IE155: And when my sons went there, they said the police officer went to the vacation, four days, not here.

P148: You have children? (4S 073)

ID164: *Do you have children?*

S187: *Yes.*

IE156: Yes.

P149: You said "sons." How many sons? (4S 074)

ID165: *You said "bacheha (boys)." How many sons?*

S188: *Two sons.*

IE157: Two sons.

P150: Do you have daughters? (4S 075)

ID166: *Do you have "dakhtars (daughters)"?*

⁴¹² Omission 10: "My son came to the hospital, at four o'clock, after they took my photo (MRI)" in S184 was omitted from IE153, deleting this element from the suspect's fact statement.

S189: *Yes.*

IE158: *Yes.*

P151: How many? (4S 076)

ID167: *How many daughters?*

S190: *Four.*

IE159: *Four.*

P152: Four daughters? (4S 077)

I031: *Yes.*

P153: And two sons? (4S 078)

ID168: *Four daughters and two sons?*

S191: *"Baleh (Yes)."*

IE160: *Yes.*

P154: Do they all live in Canada? (4S 079)

ID169: *Do all of them live in Canada?*

S192: *"Baleh (Yes)."*

IE161: *Yes.*

P155: Do they live with you? (4S 080)

ID170: *Do they live with you?*

S193: *Yes, they live with me.*

IE162: *Yes.*

P156: All of them? (4S 081)

ID171: *All of them live with you?*

S194: *"Baleh (Yes)."*

IE163: *Yes.*

P157: How do I properly pronounce your name? (4S 082)

ID172: *How can I pronounce your name?*

S195: <sounding a little puzzled> *My name?*

ID173: *"Baleh (Yes)."*

IE164: My name?

P158: Yes. (4S 083)

ID174: *"Baleh (Yes)."*

S196: *My name is Peer Mohammad.*

IE165: My name is Peer Mohammad.

P159: Peer Mohammad? (4S 084)

I032: Yes.

P160: Is Mohammad your family name? (4S 085)

ID175: *Is Mahammad your family name?*

S197: *My family name is Khairi.*

IE166: My last, my last name is Khairi. Peer Mohammad Khairi.

P161: Now, how do I spell Khairi? (4S 086)

ID176: *How do I pronounce or write Khairi?*

S198: *I can't write.*

IE167: I don't know how to write.

P162: That's fine. (2S 037)

ID177: *It's OK.*

P163: Can I call you Peer Mohammad? (4S 087)

ID178: *Can I call you Peer Mohammad?*

S199: *"Baleh (Yes)."*

IE168: Yes.

P164: Thank you. (4S 088)

ID179: *Thank you.*

S200: <looking away from the police officer, who was about to ask the next question, and turning to the interpreter, instead> *Till now, I've never had a [car] problem involving insurance. I've never been charged for a traffic violation. My car is broken and is still there, and no one has asked me anything about it.*

IE169: *So far, we don't know anything about my insurance, my car's down there, and*

nobody just ask (*sic*) me anything about it. (AL6)⁴¹³

S201: <regaining strength in the voice> *Do you*⁴¹⁴ *understand? The tow truck took away my car immediately.*

IE170: And [a] tow truck, this..., immediately a tow truck came and towed my vehicle and just went to this place again.

S202: <regaining even more strength in the voice> *Except for me and that truck, there was no other car on the highway.*

IE171: There was no any other vehicle on the highway except me and the tow truck.

S203: *Not the tow truck but the truck that hit me.*

I033: I'm sorry, my mistake.

IE172: Erm..., except me and the truck...,

I034: Not tow truck.

S204: <without looking at the police officer, who tries to cut in again but fails> *If there had been any other cars on the high way at that time, then this truck could have hit other vehicles. too.*

IE173: If there were any other vehicle, there was a possibility of, this truck could have been, could have hit other vehicles, too.

I035: OK.

P165: And this is on a highway? (4S 089)

ID180: *Was it on a highway?*

S205: *"Baleh (Yes)."*

IE174: Yes.

P166: Four oh one (401), that was four zero one? (4S 090)

ID181: *Highway 401?*

S206: *"Baleh (Yes)," 401.*

IE175: Yes 401.

P167: When you came to Canada, did you have to take a driver's test? (4S 091)

ID182: *When you came to Canada, did you have to take a driver's test to get a license?*

⁴¹³ Alteration 6: "Till now, I've never had a [car] problem involving insurance. I've never been charged for a traffic violation" in S200 was replaced by "[s]o far, we don't know anything about my insurance" in IE169.

⁴¹⁴ Suspect Using "You" for Interpreter: #9

S207: *Yes, why not?*

IE176: Yes, why not.

P168: And did they..., did you have to write a test? (4S 092)

ID183: *Was there a written examination? Did you have to take a written examination?*

S208: *I studied for the exam. I studied the traffic signs, but failed many times. Finally, I passed.*

IE177: Yes, I have the signs; I know the signs, and also, er, a number of times..., I got a certificate from there, and also I got, a number of times failed. Eventually, I passed.

Scene 4 (Murder Interrogation) ***26:26 minutes (51:13-77:39)**

P169: Your phone number at your home, (3S 016)

ID184: *Your telephone at home,*

S209: *“Baleh (Yes).”*

P170: What is it? (4S 093)

ID185: *What is it?*

S210: *I don't know.*

IE178: I don't know.

P171: Don't know? (4S 094)

I036: No.

P172: But he has a telephone at home? (4S 095)

ID186: *You have a telephone at home?*

S211: *“Baleh (Yes).”*

IE179: Yes.

S212: *It's a home telephone. I don't have a cell phone.*

IE180: It's a home phone number. It's (a) home phone. I don't have a cell phone.

P173: OK. Today, (2S 038)

ID187: Today,

P174: you used the telephone. (2S 039)

ID188: You used the telephone.

P175: Yes? (4S 096)

S213: <answering directly, nodding> “*Baleh (Yes).*”

ID189: <overlapping with the suspect’s response> “*Baleh (Yes)*”?

IE181: Yes.

P176: You called the police. (4S 097)

ID190: *You called the police yourself.*

S214: “*Baleh (Yes).*”

IE182: Yes.

P177: Tell me why you called the police. (4S 098)

ID191: *Why did you call the police?*

S215: *How should I talk without my lawyer?*

IE183: Now again, how should...,

S216: <interrupting the interpreter> *What should I say?*

IE184: *without my lawyer? Things I’m supposed to say, I say.*

P178: But it was you who called 911? (4S 099)

ID192: *You called 911 yourself?*

S217: *Yes, I know I called 911. I don’t know anything else.*

IE185: Yes. I know..., the only thing I know is 911. The rest I don’t know.

P179: But it was you who called 911 today. (4S 100)

ID193: *Did you call the police yourself?*

S218: “*Baleh (Yes).*”

ID194: *You called 911.*

IE186: Yes.

P180: Because of something that happened at your home. (4S 101)

ID195: *Something happened at your home.*

S219: <looking down very uncomfortably for a moment, moving his legs slightly> *I really don't know this at all. You⁴¹⁵ were not in my situation. I called the police and asked them to come fast so that the problem would not become serious.*

IE187: I don't know the..., the...incident. All I said is, come on, come here, come on in, that is er..., (OM11)⁴¹⁶

I037: <to the police officer> Excuse me,

ID196: <to the suspect> *Come fast, what did you say happened?*

S220: *I said, "come and see what happened."*

IE188: Come on in and watch, see what happened, or what was the matter.

P181: And what was the matter? (4S 102)

ID197: *What was the matter?*

S221: *I don't know very much without... My head aches, and my brain is not well.*

IE189: I cannot say anything without my lawyer. (AD1)⁴¹⁷ Right now, I'm fainting.

S222: *As I said before, I'm not feeling well and feel like fainting.*

IE190: I'm getting the sweat, and also I'm fainting.

P182: Because you're upset. (4S 103)

ID198: *Because you are "khafe (angry)"?*

S223: *No, I'm not angry. I'm not feeling well. I haven't eaten, and I haven't taken my medicine.*

IE191: No, I'm not upset. It is because I didn't eat, and also I didn't take medication.

P183: My officers tell me that you ate earlier. (4S 104)

ID199: *My officers told me that you ate earlier.*

S224: *At around two or three o'clock, they brought me a small bun of this size and a glass of juice.*

⁴¹⁵ Suspect Using "You" for Interpreter: #10

⁴¹⁶ Omission 11: In S219, the suspect talked directly to the interpreter, saying, "*You were not in my situation,*" which was dropped from the following rendition IE187. Also, "*I called the police*" and "*(asked them to come fast) so that the problem would not become serious*" in S219 were omitted from IE187.

⁴¹⁷ Addition 1: In S221, there was no word after "*without*," but in IE189 the word "my lawyer" was added after "*without*," most probably by an inference made by the interpreter.

- ID200: *Two in the morning or two in the afternoon?*
- S225: *In the morning, morning.*
- ID201: *What time did you eat supper? What did they bring?*
- S226: *Three or three-thirty or four. I didn't have a watch at that time. I ate two slices of bread wrapped in paper. I don't know what was inside.*
- IE192: *At 2:00 p.m., or two o'clock p.m., they brought something in the paper (sic). I eat that. I ate that. (AL7)⁴¹⁸*
- P184: *Yes.*
- S227: *With that, one glass of juice.*
- IE193: *And one glass of juice.*
- P185: *Did you need something to eat? Do you have headaches from not eating?*
(4S 105)
- ID202: *He⁴¹⁹ is asking if you have a headache because you haven't eaten.*
- S228: *Headache is something else. My stomach is "mede (not feeling well)."*
- IE194: *Not only..., I think also I get fainting right now, get dizzy.*
- P186: *When you called the police, you told them to come to your home. (4S 106)*
- ID203: *When you called the police, you told them to come to your home.*
- S229: *I said earlier I would not talk without my lawyer.*
- IE195: *I said...*
- S230: *When my lawyer comes, I will tell everything.*
- IE196: *I said, until my lawyer's not (sic) here, I cannot talk. When he comes, I'll say anything.*
- P187: *But the conversation you had on, with 911, (4S 107)*
- ID204: *But the talk you had with 911 at that time,*
- S231: *<raising the pitch, sounding irritated> I don't know the language! What could I have said!*

⁴¹⁸ Alteration 7: As to around "what time" he ate supper, the suspect said "[a]t around two or three o'clock" in S224, "[i]n the morning, morning" in S225, and "[t]hree or three-thirty or four" in S226, obviously quite confused about the time. However, the translation in IE192 was "[a]t 2:00 p.m., or two o'clock p.m.," which was a little too much "editing" or alteration on the interpreter's part. Instead, the interpreter should have translated all the confused time descriptions just the way they were stated by the suspect and let the interviewing police officer do the figuring out.

⁴¹⁹ Interpreter Using "He" for Police Officer: #2

IE197: I didn't know the language. What should I say?

P188: But you know that this conversation is recorded. (4S 108)

ID205: *But do you know that the talk with 911 was recorded?*

S232: *I don't know that.*

IE198: Yes, I don't know about that.

P189: I'm telling you now that it is recorded. (4S 109)

ID206: *Now I tell you that it was recorded.*

S233: *I don't know anything about it.*

P190: <before the interpreter translates the suspect's response in S233> OK?

IE199: I don't know. Yes.

S234: *I don't know about that recording. I was not recorded in front of my eyes.*

IE200: I don't know about it being recorded. It's not recorded in front of me.

S235: *They recorded it? They did what? Whatever they did, I don't know anything about it.*

IE201: If they recorded, whatever they recorded, they did it.

P191: Yes. (2S 040)

ID207: *Yes.*

P192: But when I listen, (2S 041)

ID208: *When I listened,*

P193: to your voice, (2S 042)

ID209: *to your voice,*

P194: talking to the operator, (2S 043)

ID210: *when you talked with the operator,*

P195: and talking to the translator or the interpreter on the telephone, (3S 017)

ID211: *and talked with the interpreter,*

S236: *"Baleh (Yes)."*

P196: you told the, you told the operator, through the interpreter, (2S 044)

ID212: *you told the operator through the interpreter,*

P197: that you spoke Hindi. (4S 110)

ID213: *that you spoke Hindi.*

S237: <making a long statement> *I only told him, “You come.” I know just a little Hindi only. If I knew Hindi, why would I be here all night? If I did, why would I ask for a lawyer? <to the interpreter> If I knew Hindi, why would you be here? Why would I be relying on you now?*⁴²⁰

IE202: I told him to...er, (OM12)⁴²¹

I038: <to the police officer> Excuse me, I have to go back again.

P198: Please.

ID214: *I’m sorry.*

S238: *“Baleh (Yes).”*

ID215: *What I understood was ...,* <interrupted by the suspect>

S239: *I said if I knew Hindi,*

IE203: If I knew Hindi properly,

S240: *I would have said everything I wanted to say.*

IE204: I would have said, I would have told them all of everything,

S241: *After that he kept talking to me, but I said I could not understand anything anymore.*

IE205: And they talked to, and they talk (*sic*), I told them that I didn’t know too much.

S242: *And they asked me what language I understood. I told them Dari.*

IE206: And they asked me, “What language do you speak?” I told them Dari.

P199: OK. But you told them if they came to your home, you would tell them what happened to your wife. (4S 111)

ID216: *And when you told them to come to you home, you said you would tell them what happened to your wife.*

⁴²⁰ Suspect Using “You” for Interpreter: #11

⁴²¹ Omission12: In S237, the suspect re-emphasized his limited Hindi proficiency, addressing his statement directly to the interpreter, “*If I knew Hindi, why would I be here all night? If I did, why would I ask for a lawyer? If I knew Hindi, why would you be here? Why would I be relying on you now?*” Though the main point, i.e. the suspect had limited Hindi proficiency, was recovered in the following section (IE203: If I knew Hindi properly; and IE204: I would have said, I would have told them all of everything), the original emphatic tone and expressions in S237 remained unrecovered.

S243: *I don't know anything.*

IE207: I don't know.

P200: You don't remember that? (OS 006)

S244: <Interrupting and thus overlapping the interpreter's translation for P200>

Without my lawyer, I won't say anything.

IE208: Without my lawyer, I cannot say anything.

P201: So you don't remember this conversation? (4S 112)

ID217: *Don't you remember this conversation?*

S245: *What?*

IE209: What?

P202: This conversation with the 911 operator. (4S 113)

ID218: *The conversation you had with 911.*

S246: *I said what I remember. I didn't say anything else.*

IE210: Whatever I knew, I said. I didn't say anything else.

P203: But you said, if the police didn't come, you would kill someone else. (4S 114)

ID219: *You said if the police didn't come, I would kill someone.*

S247: <shaking his head clearly and decisively in negation> *No. I never did.*

IE211: No, I didn't say. No.

S248: *No.*

IE212: No.

P204: What were the words you used? (4S 115)

ID220: *What did you say using what kind of words?*

S249: *All I said was, "Tiz bian (Come fast)." Otherwise, something would happen to me which would 'khodamo az bein mibaram (make me destroy myself)'."*

IE213: I said, "tiz bian," come fast. "Age nayin," if you don't come, there'd be, "yek vaghe dghe sar e man mishe (another incident will happen on me)," there would be another incident, on me.

P205: I do not understand that. (4S 116)

ID221: *I don't understand that.*

S250: <sounding frustrated> *I told you the truth. I didn't say anything else. I just said, "Tiz bien, tiz bien, tiz bien (come fast, come fast, come fast)." The police didn't come early enough. They came very late.*

IE214: I didn't say anything else. I just said, "*Tiz bien. tiz bien, tiz bien.*" [It] means come fast, come fast, come fast. Still, they come late.

S251: *If you don't come fast, something will happen to me.*

IE215: If you do not come fast, there would be something happening on me.

P206: What? (4S 117)

ID222: *What?*

S252: "*Be khodam yek vaghea mishe* (something bad will happen to myself, or I might die)." *I myself would be terminated.*

IE216: Perhaps, I would have been...wasted.

P207: What does "wasted" mean? (4S 118)

ID223: *What does "be khodam yek vaghea mishe* (something bad will happen to myself, or I might die)" *mean?*

S253: *I might have jumped from somewhere. I was under a lot of stress and could not think well.*

IE217: Perhaps, I would have...maybe...jumped somewhere, like top to bottom...to, or maybe I thrown away myself somewhere down.

P208: Why? (4S 119)

ID224: *Why?*

S254: *I could not think well.*

IE218: My thought was not thinking (*sic*). I wasn't thinking.

P209: Why? (4S 120)

ID225: *Why?*

S255: *I am sick. I said I am sick.*

IE219: I said that...I am...I'm sick.

P210: What kind of "sick"? (4S 121)

ID226: *What kind of sickness?*

S256: *Suddenly my "asab (nerve)" becomes irritated. Suddenly I lose temper.*

IE220: My.., the problem with my brain. Suddenly, I lose control.

P211: You told me earlier, that makes you not be able to sleep. (4S 122)

ID227: *Like what happens when one cannot sleep? You can't sleep well?*

S257: *Yes, [that is right]. I can't sleep.*

IE221: Yes, [that is right]. I don't fall asleep.

S258: *If I don't sleep, I become easily irritated and lose temper.*

IE222: If I don't fall asleep, my...just...I get...,

I039: "Asabum kharab mishe (nerves become bad, become irritated)" means...

IE223: <after 5.121-second pause> ...I lose my thought...I, er..., I can't think properly..., I get..., <pausing to think>

I040: Er, 'cuse me once again, it's the word I can't say that would... , er try to remember, "asabum kharab mishe"...,

IE224: <after 6.493-second pause> Very angry. <<The other police officer nods.>>

P212: Did you get angry yesterday? (4S 123)

ID228: *Did you get "ghach (very angry)" yesterday?*

S259: *What?*

ID229: *Did you get "ghach (very angry)" yesterday?*

S260: *Yesterday?*

ID230: *Yes.*

S261: *No. Not yesterday.*

IE225: Not yesterday.

P213: Today? (4S 124)

ID231: *Today?*

S262: *Yes.*

IE226: Yes.

P214: Why? (4S 125)

ID232: *Why?*

S263: *If I can't sleep at night, my condition worsens.*

IE227: I said at night if I don't fall asleep, I can't control myself.

P215: <looking at the suspect> So **he**⁴²² gets angry? (4S 126)

ID233: *Then you get angry?*

S264: *What?*

ID234: *Then you get angry?*

S265: *My “fekar (thinking)” gets bad.*

IE228: I just can't think.

P216: And that's what happened today? (4S 127)

ID235: *Did you become that way today?*

S266: *I became unable to think today.*

IE229: Today, I just lost my thought.

P217: Who was home when this happened? (4S 128)

ID236: *Who was home when you fell into this situation?*

S267: *Do I have to answer all these questions?*

IE230: Should I answer all these questions?

P218: We've already discussed. **His...**, **his...**, it's up to **him**⁴²³ to answer...,
(2S 045)

ID237: **He**⁴²⁴ says...

P219: <interrupting the interpreter's translation in ID237> up to **him**⁴²⁵ to decide.
(4S 129)

ID238: **He**⁴²⁶ says we've already talked with you about it. *It's something you decide.*

S268: **You** know what I have already told the police. **You** do, don't **you**?⁴²⁷ *But the police took a very long time [to arrive].*

⁴²² Police Officer Using “He” for Suspect: #17

⁴²³ Police Officer Using “He” for Suspect: #18

⁴²⁴ Interpreter Using “He” for Police Officer: #3

⁴²⁵ Police Officer Using “He” for Suspect: #19

⁴²⁶ Interpreter Using “He” for Police Officer: #4

⁴²⁷ Suspect Using “You” for Interpreter: #12

IE231: But then what I said already, the police knows (*sic*) about it. The police came late.

I041: OK.

P220: And what happened? (4S 130)

ID239: *And what happened?*

S269: *I don't remember.*

IE232: I don't know...that incident. (AL8)⁴²⁸

S270: *I told you,*⁴²⁹ *without my lawyer, I can't say anything!*

IE233: Until my lawyer's not (*sic*) here, I can't say anything.

P221: You don't know what happened to you wife? (4S 131)

ID240: *Don't you know what happened to your wife?*

S271: *Without my lawyer, I can't say anything.*

IE234: Till my lawyer's not (*sic*) here, I can't say anything.

P222: But you made the call, to 911. (4S 132)

ID241: *You called 911 yourself.*

S272: *"Baleh (Yes)."*

IE235: Yes.

P223: And it was only you and your wife at home. (4S 133)

ID242: *Only you and your wife were at home.*

S273: *My eldest son was at home but he went out.*

IE236: My eldest son was there, but he got out.

P224: When this was happening? (4S 134)

ID243: *When this was happening?*

S274: *"Baleh (What)?"*

ID244: *When this was happening?*

S275: *What was happening?*

⁴²⁸ Alteration 8: As was explained in Chapter XII, D-4, *supra*, "*I don't remember*" in S269 was altered to "I don't know...that incident" in IE232, the expression "*that incident*" grammatically implying the suspect's knowledge about "*what incident*" is being questioned about.

⁴²⁹ Suspect Using "You" for Interpreter: #13

IE237: What happened?

P225: You know your wife is dead. (4S 135)

ID245: *He*⁴³⁰ *wants to say your wife has died.*

S276: <shaking his head> *I didn't know that until now.*

IE238: I don't (*sic*) know it till now.

P226: Nobody told you your wife is dead? (4S 136)

ID246: *Nobody told you that your wife has died?*

S277: *No.*

IE239: *No.*

P227: You never saw your wife on the bed? (4S 137)

ID247: *Didn't see your wife on the "bestar (bed)"?*

S278: *"Baleh (What)"?*

ID248: *Didn't you see your wife on the "bestar (bed)"? On the "takht (bed)"?*

S279: *I saw her on the bed, but I didn't know that she was dead.*

IE240: I saw her on the bed, but I didn't know about her dead.

P228: <after 6.906-second pause> You know she was killed today in your apartment.
(4S 138)

ID249: *Do you know she was killed in your apartment?*

S280: <Moves in his seat very uncomfortably, looking at the interpreter> *Earlier, "goftin (plural you)"*⁴³¹ *told me that without my lawyer, I should not talk.*

IE241: You told me that until...

S281: <looking at the interpreter> *Why do you do it like this? Do you*⁴³² *know if my lawyer will come? When he comes, I will talk.*

IE242: You told me that till my lawyer's not (*sic*) here, don't talk. (OM13)⁴³³

⁴³⁰ Interpreter Using "He" for Police Officer: #5

⁴³¹ Suspect Using "You" for Interpreter: #14

⁴³² Suspect Using "You" for Interpreter: #15

⁴³³ Omission 13: IE242 only covered S280 and did not translate the sentences in S281 ("Why do you do it like this? Do you know if my lawyer will come? When he comes, I will talk."), all of which were addressed directly to the Interpreter.

P229: I told him⁴³⁴ that? (4S 139)

ID250: *Did I say that?*

S282: *On the telephone you⁴³⁵ told me.*

IE243: On the telephone you told me.

P230: We never spoke on the telephone. <<The suspect looks at the police officer.>>
(2S 046)

ID251: *I didn't talk...*

P231: You and I never spoke on... (OS 007)

S283: <turning from the police officer to the interpreter> *That's right. That's right.*

ID252: *You and I never...*

S284: *That's right. That's right. Someone told me the police can only take your
finger prints and take your picture...*

ID253: <to pause the suspect> "OK."

IE244: The person who spoke to me on the phone,

P232: Yes.

IE245: He told me that only the police could take your fingerprints, ...

P233: <putting up his hand to stop the interpreter> OK, stop, please. This is the
conversation with the lawyer, yes? (4S 140)

ID254: *Is this what you talked about with your lawyer?*

S285: *"Baleh (Yes)."*

IE246: Yes.

P234: <shaking his head> That's, that's private. (4S 141)

ID255: *That's private. It's your own confidential content.*

S286: *I don't know.*

IE247: I don't know.

P235: That's between...OK, I'm telling you..., (2S 047)

ID256: *I tell you,*

⁴³⁴ Police Officer Using "He" for Suspect: #20

⁴³⁵ Suspect Using "You" for Interpreter: #16

P236: Your conversation with your lawyer, (2S 048)

ID257: *The conversation between you and the lawyer,*

P237: is just for you and your lawyer, and your interpreter. (4S 142)

ID258: *is only for you, your lawyer, and the interpreter.*

S287: “*Baleh (Yes).*”

IE248: Yes.

P238: Today, (2S 049)

ID259: *Today,*

P239: did you go out? (4S 143)

ID260: *did you go out?*

S288: *From where?*

IE249: From where?

P240: <looking at the interpreter> From his⁴³⁶ home. (4S 144)

ID261: *From your own home.*

S289: *From my home? No.*

IE250: No. Not from my home.

P241: Not until the police arrived? (4S 145)

ID262: *Until the time the police came? Until the police came?*

S290: *The police came. I was home. The police came and tied my “shaana (shoulders/arms).”*

IE251: Until the police arrived, I was at my home. They, they tied me up.

S291: *They tied my hands behind me.*

IE252: They tied my hand (*sic*) behind me, and..., <prompting the suspect with a hand>

S292: *They brought me here.*

IE253: and they brought me here.

P242: How long before the police arrived at your home, did your son leave?

⁴³⁶ Police Officer Using “He” for Suspect: #21

(4S 146)

ID263: *What did your son do until the police came? Your son left home?*

S293: *My son left home about 15 or 20 minutes earlier.*

IE254: *My son...got out of home almost 20 minutes, 15 to 20 minutes,*

P243: Before the police? (4S 147)

ID264: Before the police came?

S294: <nodding first, and then continuing in a strong pitch> *Before the police arrived. The police were late. The police were very, very late. The police did not want to come [to my house]. The police were scared that maybe I had something. I told them I didn't have anything (dangerous), so "come and find out."*

IE255: Before the arrival of the police....the police were scared. They came very, very late, and I told them, come on, there's nothing with me. (RD5)⁴³⁷

S295: *They even asked me to open the door of our house and said that they were coming in.*

IE256: They asked me to..."open your door...we come in, we come in."

S296: *When I opened the door, two police officers were outside holding guns. Three or four people were also there, and immediately they arrested me and tied my "shaana (shoulders/arms)." They wouldn't let me go back to my house. They dragged me out [of my house]. I didn't know what they wanted to do.*

IE257: When I opened the door, two people...er...two persons, I mean officers, <<The interviewing officer nods.>> two persons went to the... <<Here, the suspect says "zeena (stairs)" in the background.>> stairway, four...three people..., (OM14)⁴³⁸

S297: *And over there were one "dukhtar (girl)" and another, male police officer. They pointed the guns toward me, ...*

IE258: one girl and one other police was (*sic*) on the other side, and they just pointing (*sic*) the gun towards me, and...

⁴³⁷ Reduction 5: The details in S294 describing how the police seemed to be acting right before the suspect's arrest ("*The police did not want to come [to my house]. The police were scared that maybe I had something. I told them I didn't have anything (dangerous), so 'come and find out.'*") were reduced in IE255, though the overall pragmatic meaning was retained.

⁴³⁸ Omission 14: Several factual details in S294 ("*They wouldn't let me go back to my house. They dragged me out [of my house]. I didn't know what they wanted to do.*") were omitted from IE257 and did not get recovered in the following section, either.

S298: *told me to raise my head this way. I did so immediately. They stood on top of me and tied my...*

IE259: *told me to raise your hands, and turn your head up, and they <<Here, the suspect says “*tied my hands* (behind my back).” >> tied up my hands. (OM15)⁴³⁹*

P244: Your son who left, how old is he? (4S 148)

ID265: *How old is your son who left the house, the son who left the house?*

S299: *My son is 32 years old.*

IE260: *My son is 32 years old.*

P245: Thirty-two? (4S 149)

ID266: *Thirty-two?*

S300: <nodding> “*Baleh* (Yes).”

IE261: *Yes.*

P246: What is that son’s name? (4S 150)

ID267: *What is that son’s name?*

S301: “*Sakhi Ahmad*”

IE262: “*Sakhi Ahmad... , Sakhi Ahmad*”

P247: And you have another son? (4S 151)

ID268: *Do you have another son?*

S302: “*Baleh* (Yes),” *I have another son.*

IE263: *Yes, I have another son.*

P248: How old is he? (4S 152)

ID269: *How old is he?*

S303: *That son is 20 years old.*

IE264: *That son is 20 years old.*

⁴³⁹ Omission 15: “*They stood on top of me*” in S298 was omitted from IE259. While what exactly “*stood on top of me*” meant is not clear, it might have meant that some police officers’ feet were on top of the suspect’s back when he was forced to either kneel or lie on his stomach at the time of the arrest, and the importance of such detail is for the fact-triers, not the interpreter, to judge.

P249: Twenty? (4S 153)

ID270: *Twenty?*

S304: *Yes, twenty.*

IE265: Yes, twenty.

P250: And was he home today? (4S 154)

ID271: *Was he home today?*

S305: *No, he left much earlier.*

IE266: He got out earlier.

P251: Do you know where he went? (4S 155)

ID272: *Do you know where he went?*

S306: *He went to college to study.*

IE267: He went to college to study.

P252: OK. Where did your older son go? (4S 156)

ID273: *Where did your eldest son go?*

S307: *I don't know.*

IE268: I don't know.

P253: You have four daughters? (OS 008)

S308: <to the interpreter> *Doesn't work. Doesn't have a job. That's all I know.*

I042: <to Detective Barsky> OK..., OK..., let me say if this one,

ID274: *You said you have four daughters?*

S309: *"Baleh (Yes)." I have two "bacheha (boys/sons)."*

ID275: *What did you say? Doesn't work?*

S310: *My eldest son doesn't work.*

IE269: And my..,

I043: Come back to this point...er...two say at the same time, so..,

P254: Yes.

IE270: My older son doesn't work.

P255: OK.

I044: Now..., about the daughters, you asked him about the daughters...

P256: You have four daughters. (4S 157)

ID276: *You have four daughters?*

S311: *"Baleh (Yes)."*

IE271: Yes.

P257: How old are they? (4S 158)

ID277: How old are they?

S312: My daughters?

IE272: My daughters?

P258: Yes. (4S 159)

ID278: *"Baleh (Yes)."*

S313: *I don't know very well, but one will be 18 years old in one or two months.*

IE273: One is, next one or two months, will be 18 years old.

P259: Yes.

S314: *Eighteen years old.*

IE274: Eighteen years old.

S315: *Eighteen years old.*

IE275: Eighteen years old.

P260: Three of the girls are 18 years old? (4S 160)

ID279: *The other three...*

S316: <interrupting the interpreter> *The other three, I don't know.*

IE276: The rest I don't know.

S317: *Look at their IDs yourself and check their age.*

IE277: Read their IDs and find out.

P261: Are they older or younger? (4S 161)

ID280: *Are they older or younger?*

S318: *Older.*

IE278: They are older.

P262: Do they work? (4S 162)

ID281: *Do they work.*

S319: *"Baleh (Yes)," they work.*

IE279: Yes, they work.

P263: All four? (4S 163)

ID282: All four?

S320: *One of my daughters, three work, one doesn't.*

IE280: One of my daughter (*sic*), three works (*sic*), one doesn't.

S321: *They go to school. They also work.*

IE281: They go to school, and they go to work.

P264: Were they home today? (4S 164)

ID283: *Were they home today?*

S322: *No, they weren't.*

IE282: No, they were not.

P265: When did they leave? (4S 165)

ID284: When did they leave?

S323: They left early, at around 930 or 10:00.

IE283: They got out earlier, around 9:30, ten o'clock.

P266: And do you remember what time your oldest son got out? (4S 166)

ID285: *Do you remember what time your eldest son left home?*

S324: *No, I don't remember well. This "vaghe (accident/incident)" was very "ghavi (forceful/powerful)." I don't remember at all.*

IE284: No, I don't remember, from this incident, maybe 15 or 20 minutes earlier.
(AL9)⁴⁴⁰

P267: Fifteen or twenty minutes before this? (4S 167)

ID286: *Fifteen or twenty minutes before this "vaghe (accident/incident)"?*

S325: *Fifteen minutes before.*

IE285: Fifteen minutes.

P268: Did anybody come to your house today? (4S 168)

ID287: *Did anyone come to your home today?*

⁴⁴⁰ Alteration 9: This alteration is actually a combination of one omission and one addition. IE284 altered S324 by dropping the adjective "*ghavi* (forceful/powerful)" from the word "*vaghe* (accident/incident)," and by adding an unstated fact "maybe 15 or 20 minutes earlier," as was discussed in Chapter XII, D-4, *supra*.

S326: *No.*

IE286: *No.*

P269: So when your last son left, (2S 050)

ID288: *When your last son left,*

P270: only you were home, (2S 051)

ID289: *only you were home,*

P271: and your wife was home. (4S 169)

ID290: *and only your wife was home.*

S327: *“Baleh (Yes).”*

IE287: *Yes.*

P272: And nobody came to the house. (4S 170)

ID291: *And no one came to your house.*

S328: *Except the police, no one came.*

IE288: *Except police (sic), nobody else.*

P273: When your son left, your oldest son, (2S 052)

ID292: *When your elder son left home,*

P274: Where was your wife? (4S 171)

ID293: *Where was your wife?*

S329: *I can't say anything anymore. Without my lawyer, I cannot say anything.*

IE289: *I can't...*

S330: <interrupting the interpreter> *If you want to hear everything, bring my lawyer here. In front of my lawyer, I will answer everything.*

IE290: *I cannot say anything else till my lawyer's not (sic) here. If you want anything, ask my lawyer to come here, and then I'll say anything.*

S331: *The car accident, I knew everything, so I told you everything.*

IE291: *The car accident that I knew, I told you everything about that.*

P275: And you have a good memory of the car accident. (4S 172)

ID294: *You remember he car accident very well. You have a good memory.*

S332: *I said my brain went up and came back to the same place. An ambulance came, and I went to the hospital in the ambulance car.*

IE292: That thing that I said that my brain got out and came back and I opened my eyes and the ambulance was in.

P276: Yes. (2S 053)

ID295: *"Baleh (Yes)."*

P277: But you remember the things that happened before your brain and after that happened. Yes? (4S 173)

ID296: *He⁴⁴¹ says, "Do you remember what happened before your brain went up..."*

S333: *"Baleh (Yes)."*

ID297: *"and what happened after it came back?"*

S334: *"Baleh (Yes)."*

IE293: Yes.

P278: So you have a good memory. (4S 174)

ID298: *You have a good memory.*

S335: *My memory is that...I tell the truth, I don't say anything untrue.*

IE294: My memory is that...my memory is that., what I saw, I told you, and I am telling the truth. Nothing else.

P279: You have a cut under your chin. (4S 175)

ID299: *He⁴⁴² said you have a scar here.*

S336: *The "fullbag" is here, right? The "fullbag" hit me here, and my head hit this behind me. The "fullbag"'s this part, the head of the "fullbag" hit and cut me here.*

ID300: "OK, airbag"?

S337: "Airbag."

ID301: "OK."

S338: *The "airbag"'s this part hit me here, and it became like this.*

IE295: It's the airbag, when it exploded, it hit here, and they're all stitches here.

S339: *My head also hit the ceiling and the airbag hit here, too.*

⁴⁴¹ Interpreter Using "He" for Police Officer: #6

⁴⁴² Interpreter Using "He" for Police Officer: #7

IE296: And my head just hit the ceiling of the vehicle,

P280: Uh-huh.

IE297: and they (*sic*) are back here.

P281: And you still have stitches here? (4S 176)

ID302: *Since then till now it is still there?*

S340: *Yes, it is still here. You can see it.*

IE298: Yes, 'cause see, they are stitches.

P282: How many stitches did you get? (4S 177)

ID303: *How many stitches did you get?*

S341: *I think maybe three stitches. One here, another here, and another here.*

IE299: I think three and then,

S342: *I think three. One here, another here, and another here. All was done in the hospital.*

IE300: I think three, and there's another, there's another, and they did this in the hospital.

P283: <putting out both of his own hands, fingers spread> Can I see your hands?
(2S 054)

ID304: *May I look at your "dastha (hands)"?*

<<The suspect puts his right hand on the armrest next to the police officer.>>

P284: <looking closely at the suspect's right hand> You have marks on your hands.
(4S 178)

ID305: *He⁴⁴³ says you have marks on your hand.*

S343: *This "aghvar (=jarahat=injury) shode (became=got [injured])."*

IE301: This got injured,

S344: *In the car accident..., became like this. It hurts.*

IE302: [in the] car accident..., they took...,

S345: *This (my foot) also "aghvar (=jarahat=injury) shode (became=got [injured])."*
It hurts.

IE303: and my foot also.,

S346: *"In pa (this other foot)" also "aghvar (=jarahat=injury) shode (became=got*

⁴⁴³ Interpreter Using "He" for Police Officer: #8

[injured]). ” *It hurts.*

IE304: my foot also accident (*sic*), injured in the accident...

<<The recording stops here.>>

Appendix 2

ELAN Data on Each Pause Time Length and Utterance Time Lengths

PP: Police Officer Pause Time Length
 PU: Police Officer Utterance Time Length
 IDP: Interpreter into Dari Pause Time Length
 IDU: Interpreter into Dari Utterance Time Length
 SP: Suspect Pause Time Length
 SU: Suspect Utterance Time Length
 IEP: Interpreter into English Pause Time Length
 IEU: Interpreter into English Utterance Time Length
 ISP: Interpreter Self (in English) Pause Time Length
 ISU: Interpreter Self (in English) Utterance Time Length

(Unit: Seconds)

#	PP	PU	IDP	IDU	SP	SU	IEP	IEU	ISP	ISU
001	0.73	2.26	0.89	0.82	0.37	0.252	0.92	0.37	0.433	0.75
002	2.25	4.2	1.38	1.82	0.147	0.3	0.402	1.739	4.523	0.666
003	0.254	2.14	0.433	1.22	0.582	2.765	0.537	3.9	0.548	0.703
004	0.07	1.134	0.266	3.574	0.018	3.874	0.153	0.926	1.492	3.458
005	0.246	1.014	0.32	1.073	0.106	0.162	0.327	2.148	1.538	3.843
006	0.8	7.787	0.54	4.335	0.089	0.371	0.321	3.553	0.142	13.818
007	1.805	13.497	0.295	7.416	0.06	0.674	0.257	4.656	0.294	0.281
008	1.678	0.114	0.349	0.826	1.355	1.834	0.285	1.59	0.164	1.621
009	1.067	0.746	0.202	2.604	0.32	0.414	0.14	0.578	0.218	2.26
010	0.423	3.228	0.328	1.369	0.302	0.363	1.034	4.617	0.158	6.045
011	0.141	1.376	0.389	1.86	0.946	5.468	0.549	0.14	0.153	0.233
012	0.134	1.839	0.284	5.154	1.033	0.239	0.062	0.292	0.043	0.599
013	0.336	1.339	0.027	0.835	0.019	6.208	0.176	5.744	0.672	4.723
014	0.667	0.936	0.222	1.473	2.085	2.159	0.271	8.097	1.508	0.524
015	0.79	1.281	0.309	3.576	0.193	1.362	0.088	1.89	0.341	3.021
016	0.778	1.652	0.56	1.142	0.23	6.854	0.223	0.755	0.397	3.053

017	1.561	1.549	0.414	5.315	0.302	0.332	0.345	1.393	0.111	2.456
018	0.316	1.281	0.995	4.527	0.811	0.277	1.099	10.711	1.523	13.265
019	0.288	3.39	0.672	4.386	0.187	0.705	0.239	0.228	0.111	1.371
020	2.317	5.11	0.336	6.489	0.062	2.458	0.124	4.524	0.181	1.423
021	1.291	0.377	0.751	5.439	0.012	16.615	0.287	5.123	0.371	2.515
022	0.654	8.652	0.878	3.318	0.348	1.871	0.719	9.257	0.236	1.641
023	1.704	5.706	0.396	1.378	1.457	15.541	0.028	6.766	1.34	0.532
024	1.207	1.15	0.471	1.111	0.645	0.146	0.464	1.163	0.16	2.461
025	0.368	0.878	0.301	2.146	0.548	1.058	0.01	1.834	0.951	3.869
026	0.451	2.418	0.521	3.37	0.324	5.218	0.564	9.859	0.15	1.666
027	0.553	2	0.383	4.224	1.79	4.705	1.027	11.041	1.572	5.952
028	1.212	4.431	0.277	3.025	1.273	6.645	1.339	9.892	0.34	0.341
029	2.685	4.137	0.635	3.532	0.865	4.564	2.514	5.664	0.095	3.08
030	1.039	3.566	0.549	1.447	0.427	1.27	0.253	9.703	0.638	1.076
031	0.072	1.009	1.086	1.565	0.269	0.217	0.217	0.649	0.317	0.249
032	1.151	0.398	0.815	4.56	0.277	0.929	0.13	3.12	0.13	0.353
033	3.309	3.571	0.715	4.828	0.159	4.589	0.297	3.897	0.248	1.867
034	1.148	6.078	0.795	4.961	1.527	7.825	0.483	0.185	1.267	1.012
035	1.004	6.541	0.406	2.184	0.507	5.214	0.615	2.598	1.108	0.157
036	0.554	1.895	0.399	1.569	0.667	14.16	0.958	7.064	0.317	0.199
037	0.3	0.764	0.656	4.613	1.67	8.336	0.458	7.16	0.851	0.479
038	0.411	1.247	0.272	3.267	0.455	5.012	0.769	5.614	0.936	1.443
039	0.877	3.604	0.369	3.445	1.502	0.739	0.443	3.452	0.165	3.157
040	0.681	1.682	0.636	6.045	0.236	3.654	0.601	0.324	1.844	5.675
041	2.151	6.289	3.808	0.252	0.321	2.352	0.524	1.304	2.254	0.4
042	0.806	0.41	0.411	0.234	0.414	0.284	0.463	2.918	0.521	3.85
043	0.92	2.821	0.731	3.906	0.695	1.428	0.551	1.671	0.301	4.602
044	1.373	9.622	0.71	6.199	0.267	0.255	0.198	1.056	0.156	3.611
045	1.854	7.592	1.674	4.762	0.011	0.13	0.806	4.747		
046	1.624	2.92	0.231	1.217	0.254	11.062	0.531	1.448		
047	0.753	0.213	0.419	2.067	0.069	0.348	0.211	1.611		
048	0.095	7.554	0.567	0.434	0.351	0.396	1.522	2.927		
049	0.54	0.372	0.478	8.258	0.686	0.42	0.204	0.994		
050	2.363	1.362	0.305	0.246	0.405	0.641	0.296	2.892		

051	0.754	2.913	0.576	0.976	0.055	0.134	0.58	6.359		
052	0.148	0.217	0.472	6.119	1.946	5.871	0.042	4.72		
053	0.683	0.688	1.742	1.316	1.455	2.537	0.296	2.501		
054	1.849	16.53	1.3	1.473	1.98	2.791	0.266	1.818		
055	0.675	2.024	0.684	0.687	0.096	0.158	0.452	8.137		
056	1.944	9.238	0.82	13.563	0.256	0.194	0.299	1.8		
057	0.012	6.455	0.258	1.258	0.464	0.155	0.493	5.04		
058	0.826	0.191	0.961	10.529	0.028	1.532	1.179	5.454		
059	2.749	2.921	0.275	1.981	0.734	2.051	0.386	2.23		
060	0.724	1.446	0.701	6.768	0.753	2.997	0.615	0.365		
061	0.188	0.55	0.749	0.225	0.589	1.303	0.061	2.216		
062	1.563	7.362	0.417	3.607	1.058	1.045	0.11	0.504		
063	0.352	9.4	0.413	2.934	0.775	4.769	0.315	1.14		
064	1.132	12.279	0.605	1.495	1.522	1.904	0.045	1.257		
065	1.483	4.37	1.171	9.032	2.194	0.855	0.938	3.052		
066	1.712	5.162	0.368	4.41	0.465	1.434	0.076	0.496		
067	0.72	3.07	0.266	3.211	1.119	0.844	0.016	3.765		
068	2.027	1.586	0.551	5.239	0.266	2.511	0.123	6.214		
069	0.44	1.347	0.233	1.645	0.136	6.6	0.192	0.181		
070	0.847	2.55	0.111	3.697	0.299	5.347	0.871	20.421		
071	0.615	1.457	0.481	4.486	0.061	0.751	0.519	5.226		
072	1.227	2.191	0.344	3.841	0.431	1.668	0.3	6.795		
073	0.493	5.992	0.961	3.095	0.595	13.784	0.477	6.322		
074	1.788	5.582	1.174	6.921	0.057	1.092	0.894	2.789		
075	1.989	1.71	0.52	6.271	1.143	4.051	0.469	2.579		
076	2.603	7.052	2.495	3.654	0.225	6.183	0.641	14.784		
077	1.332	2.494	1.744	5.469	0.876	0.604	0.776	0.74		
078	0.044	0.518	0.656	2.213	0.233	0.474	0.366	1.099		
079	1.383	1.235	0.057	2.273	0.54	2.02	0.399	7.513		
080	0.143	2.762	0.725	6.626	0.154	0.181	0.326	0.77		
081	1.353	6.51	0.619	2.085	0.047	0.196	0.131	4.834		
082	2.983	1.18	0.378	0.256	0.129	1.187	0.314	3.294		
083	0.714	0.343	0.851	1.518	0.434	0.462	0.503	5.752		
084	0.819	3.278	0.489	1.471	0.269	4.4	0.504	3.9		

085	1.28	2.227	0.349	0.524	0.604	0.246	1.165	9.403		
086	0.217	0.544	0.169	1.058	0.21	0.341	1.061	3.432		
087	1.806	0.376	0.007	1.059	1.062	3.926	0.34	3.696		
088	0.437	1.308	0.06	0.927	0.058	0.296	0.742	3.868		
089	0.352	1.478	0.38	0.372	0.092	3.571	0.452	3.086		
090	0.474	0.207	0.143	1.097	0.415	5.263	0.321	2.716		
091	0.42	0.939	0.674	4.583	0.642	0.418	0.919	0.712		
092	1.631	3.916	0.792	0.456	0.03	18.498	0.102	3.533		
093	0.949	0.796	0.256	0.97	0.218	3.163	0.452	0.77		
094	2.14	4.777	0.977	5.118	0.519	5.147	0.242	4.191		
095	1.577	4.981	0.492	2.42	0.198	3.243	0.357	1.002		
096	0.944	4.24	1.288	1.888	0.361	2.471	0.492	0.432		
097	0.393	0.172	0.676	2.919	0.594	3.156	0.472	6.26		
098	1.365	0.324	0.482	1.122	0.026	0.162	0.849	7.991		
099	0.27	0.657	0.43	0.335	0.685	1.069	0.654	9.37		
100	1.296	4.033	0.309	0.612	1.387	9.216	0.201	0.139		
101	1.91	8.252	0.689	1.206	0.551	0.732	0.082	0.231		
102	0.72	1.692	0.668	6.785	0.178	1.108	0.085	3.861		
103	0.511	3.052	0.991	1.539	0.365	7.327	0.347	1.262		
104	1.101	1.893	0.191	2.768	0.136	1.341	0.605	0.615		
105	0.417	2.649	0.46	2.226	0.066	8.664	0.638	3.242		
106	0.112	2.338	0.84	2.791	0.037	1.301	0.738	3.813		
107	3.169	2.159	1.228	0.772	0.115	3.92	0.204	7.418		
108	2.487	4.584	0.781	1.014	0.385	3.956	1.359	12.133		
109	1.615	3.912	0.49	0.819	0.186	0.229	0.26	5.586		
110	1.191	1.022	0.388	1.848	0.382	1.006	0.828	5.093		
111	0.098	0.272	0.584	2.826	1.006	2.944	0.274	5.832		
112	1.418	1.054	0.716	1.5	0.732	6.615	1.083	4.796		
113	0.435	3.3	0.334	4.59	0.42	0.939	0.343	4.2		
114	1.423	1.08	0.484	3.222	0.688	2.437	0.303	3.839		
115	0.078	0.142	1.002	5.41	0.093	1.949	0.098	2.139		
116	0.839	0.9	0.162	1.33	0.017	3.546	0.853	2.305		
117	1.928	1.077	0.511	0.833	0.016	1.941	0.149	6.175		
118	1.392	1.198	0.335	4.836	0.118	0.311	0.11	7.812		

119	1.704	7.16	0.065	3.321	1.084	6.387	0.319	6.894		
120	0.555	0.447	0.41	0.828	1.54	4.21	0.103	1.908		
121	1.399	2.823	0.089	0.834	0.379	7.423	0.53	2.324		
122	2.002	1.667	0.275	1.115	0.42	0.525	0.11	4.212		
123	1.554	0.917	0.199	0.95	0.599	0.98	0.056	0.268		
124	0.237	1.628	0.59	0.919	0.28	0.433	0.155	4.669		
125	0.885	0.31	0.182	1.592	0.02	2.834	0.139	1.102		
126	0.091	0.24	0.264	4.139	0.285	1.241	0.034	3.66		
127	0.116	1.55	0.474	0.691	0.208	0.743	0.271	1.428		
128	1.248	1.449	1.153	1.754	0.406	4.326	0.102	8.279		
129	1.631	1.773	0.206	1.638	1.745	1.89	0.056	3.69		
130	1.239	0.886	0.764	0.194	0.854	7.51	0.273	1.448		
131	0.93	1.139	0.303	3.23	0.228	1.488	0.072	0.587		
132	1.138	2.219	0.056	0.69	1.825	12.118	0.179	1.315		
133	0.009	1.097	0.554	3.055	0.616	2.359	0.583	11.699		
134	0.331	0.309	0.251	1.094	0.183	5.336	1.055	9.168		
135	0.335	0.242	0.216	0.86	0.407	6.021	0.33	14.112		
136	1.571	1.276	0.471	3.664	1.657	4.93	0.277	1.628		
137	0.387	0.315	0.517	2.145	1.231	20.254	0.292	6.347		
138	2.102	1.881	0.442	0.569	0.372	0.315	0.251	2.589		
139	2.303	1.654	0.199	0.583	0.882	0.901	0.028	7.286		
140	0.256	0.304	0.535	0.87	1.245	1.175	0.395	4.893		
141	0.673	0.911	0.395	1.978	1.523	3.148	2.076	1.296		
142	0.347	0.984	0.509	2.944	0.546	1.64	0.326	1.357		
143	2.288	2.124	0.658	0.397	1.553	2.364	0.322	1.926		
144	1.509	0.8	0.396	5.128	0.688	5.558	0.088	7.235		
145	1.796	0.354	0.835	0.88	0.81	11.183	0.59	8		
146	0.353	0.333	0.188	0.257	1.219	4.42	0.18	1.79		
147	2.204	0.852	0.282	1.647	1.385	11.877	0.25	1.084		
148	1.401	0.829	0.773	0.686	0.527	1.486	0.472	1.089		
149	0.727	2.185	0.155	1.939	0.401	1.629	0.105	2.142		
150	0.402	1.043	0.787	1.831	1.476	5.017	0.259	5.19		
151	0.662	0.349	0.778	1.686	0.118	0.479	0.693	6.923		
152	0.554	0.606	0.482	4.496	0.097	11.127	0.045	10.03		

153	0.098	0.456	2.059	2.768	0.041	2.017	0.241	18.456		
154	1.056	1.483	0.515	1.104	0.873	1.992	0.478	1.214		
155	0.713	0.956	1.635	3.306	0.315	9.675	0.699	8.758		
156	0.518	0.548	1.036	3.797	0.578	2.563	0.375	0.368		
157	1.582	2.767	0.316	1.089	0.022	0.888	0.413	0.493		
158	0.333	0.254	0.601	0.713	1.197	0.786	0.205	0.389		
159	0.369	0.857	0.012	2.188	0.132	2.266	0.526	0.335		
160	0.84	3.972	0.408	1.832	0.025	9.846	0.25	0.31		
161	0.705	2.255	0.279	0.968	1.257	14.723	0.153	0.378		
162	0.178	0.436	0.501	1.572	0.585	6.218	0.288	0.339		
163	0.652	1.727	0.601	1.095	1.059	0.751	0.348	0.362		
164	0.292	0.422	0.699	1.962	0.099	5.821	0.69	0.391		
165	1.387	1.177	0.109	1.542	0.949	27.7	0.295	1.65		
166	0.579	1.83	0.243	0.759	0.561	4.009	0.775	6.213		
167	0.915	5.163	0.398	0.126	0.035	1.7	0.154	1.731		
168	1.956	2.962	0.339	1.841	0.014	0.152	0.242	0.375		
169	4.116	1.562	0.46	1.542	0.062	0.693	0.044	8.856		
170	1.011	0.466	0.354	1.071	0.911	1.518	0.251	8.784		
171	0.551	0.303	0.332	1.236	0.428	4.46	0.195	5.589		
172	1.344	1.832	0.417	3.232	1.538	2.048	0.511	3.652		
173	0.734	2.636	0.11	0.255	0.619	8.067	0.319	9.141		
174	1.446	1.47	0.184	0.25	0.276	0.812	0.266	0.309		
175	0.572	0.283	0.475	2.177	0.361	7.258	0.563	0.74		
176	0.63	1.192	0.574	3.757	0.403	9.015	0.187	0.93		
177	3.281	1.876	0.367	0.581	0.046	2.255	0.682	12.807		
178	3.385	2.504	0.465	2.588	0.458	0.829	1.153	0.446		
179	1.593	2.434	0.294	0.458	0.534	4.941	0.297	0.212		
180	0.676	2.077	0.293	0.951	0.171	3.4	0.44	5.512		
181	1.163	0.987	0.164	0.803	2.083	4.545	0.994	0.294		
182	1.455	0.941	0.201	8.088	0.03	0.276	0.181	0.291		
183	1.455	2.351	0.458	4.347	0.015	10.786	0.492	1.459		
184	0.48	0.406	1.23	1.078	0.272	23.688	0.113	4.199		
185	1.899	4.434	0.319	0.231	0.043	0.237	0.427	3.918		
186	2.662	4.816	0.175	1.23	1.026	6.579	0.302	0.371		

187	0.752	3.53	0.682	0.596	0.086	0.321	0.082	11.353		
188	1.978	2.841	0.229	2.009	0.017	0.515	0.731	4.201		
189	1.513	2.957	0.164	0.302	0.181	0.374	0.173	4.781		
190	0.621	0.454	0.115	1.42	0.111	0.525	0.026	3.621		
191	0.561	0.348	0.232	1.637	0.031	0.358	0.166	4.475		
192	1.649	1.008	0.373	1.579	0.297	0.347	0.125	7.474		
193	0.159	0.82	0.271	1.631	0.618	0.605	0.202	1.423		
194	0.431	1.5	0.049	1.287	0.35	0.287	0.019	4.835		
195	0.411	4.875	0.206	2.806	1.303	0.52	0.064	0.527		
196	0.801	6.085	0.907	1.346	1.087	2.448	0.135	5.62		
197	0.192	1.285	0.235	0.804	0.114	2.009	0.471	1.993		
198	0.279	0.4	0.233	0.987	0.584	1.922	0.078	1.322		
199	2.288	7.858	0.851	5.056	0.989	0.453	0.061	1.057		
200	0.696	0.933	1.642	3.932	2.763	11.85	0.224	3.957		
201	1.035	1.802	0.268	1.582	0.065	5.56	0.005	2.297		
202	1.208	2.762	0.183	2.411	1.048	5.672	0.382	2.513		
203	1.924	7.533	0.646	4.986	1.13	2.923	0.077	2.479		
204	0.542	1.485	1.047	3.098	0.1	5.363	0.017	3.179		
205	2.061	0.994	0.473	4.282	0.087	0.166	0.1	5.533		
206	1.035	0.276	0.358	2.233	0.049	0.812	0.196	3.357		
207	1.114	1.18	0.378	0.479	0.485	0.745	0.302	1.048		
208	0.553	0.342	0.691	1.393	1.056	13.89	0.123	1.943		
209	1.894	0.27	0.159	1	0.389	0.29	0.704	0.429		
210	2.765	0.848	0.276	1.508	0.091	0.315	0.03	3.615		
211	0.775	3.418	0.093	3.528	0.138	0.312	0.221	1.335		
212	1.683	1.551	0.194	3.649	0.529	4.149	0.373	0.384		
213	1.06	0.303	0.308	1.365	0.09	0.213	0.26	16.15		
214	0.746	0.287	0.027	0.745	0.196	0.229	0.017	9.534		
215	2.055	0.903	0.162	2.218	0.932	3.502	0.23	5.009		
216	2.325	1.127	0.414	6.422	0.049	0.631	1.166	4.598		
217	1.273	1.256	0.08	2.872	0.103	3.672	0.174	13.486		
218	1.8	8.8	0.01	2.584	0.319	0.261	1.04	5.301		
219	0.008	1.533	0.585	3.939	2.836	7.553	0.515	2.683		
220	3.426	0.785	0.154	2.331	0.936	2.712	0.029	7.248		

221	0.656	1.323	0.358	0.847	1.165	4.742	0.218	1.377		
222	1.579	2.619	0.471	0.283	0.934	2.311	0.12	5.499		
223	1.832	1.85	0.205	1.92	0.694	5.26	5.121	5.018		
224	1.824	1.035	0.381	0.36	0.888	8.558	6.493	0.689		
225	1.833	1.221	0.791	0.276	0.037	0.854	0.932	1.42		
226	1.331	1.802	0.541	0.783	0.466	12.151	0.414	0.305		
227	0.514	2.522	0.656	3.938	0.845	1.201	0.154	5.744		
228	6.906	2.571	0.283	1.195	0.607	3.275	0.532	1.768		
229	0.574	0.863	0.063	1.235	2.719	4.715	0.828	2.544		
230	1.206	1.391	0.2	0.196	0.003	1.385	0.384	1.503		
231	0.005	1.176	0.468	0.467	0.064	2.253	0.913	4.487		
232	0.22	0.263	0.309	0.429	0.153	2.495	0.501	1.458		
233	0.099	3.679	0.418	1.139	0.071	1.82	0.343	3.229		
234	1.338	1.447	0.241	1.078	0.42	2.547	0.424	2.105		
235	0.021	2.464	0.269	1.792	0.673	2.524	0.59	0.255		
236	0.088	1.774	0.445	5.37	0.939	0.382	0.128	2.373		
237	0.149	4.668	0.106	0.43	0.037	15.164	0.179	0.635		
238	2.226	0.344	0.714	4.734	0.096	0.146	0.34	1.153		
239	2.211	0.728	0.176	1.061	0.017	1.913	0.063	0.303		
240	0.528	0.59	0.499	3.097	1.303	2.504	0.185	3.599		
241	0.501	1.575	0.207	1.802	1.152	5.945	0.363	1.458		
242	1.17	5.154	0.598	1.977	0.551	7.149	0.894	4.034		
243	1.132	0.921	0.166	1.28	0.918	0.445	0.663	1.174		
244	1.581	2.815	0.057	1.424	0.018	3.316	0.305	2.844		
245	0.472	0.511	0.306	1.68	0.436	0.328	0.203	6.166		
246	0.294	1.264	0.068	1.495	0.886	2.629	0.333	0.284		
247	0.9	1.1	0.466	1.93	0.345	1.051	0.215	0.611		
248	0.221	0.702	0.222	2.301	0.045	0.253	0.349	0.25		
249	0.304	0.393	0.42	3.174	1.174	7.611	0.662	0.392		
250	0.574	1.123	0.23	0.968	0.826	8.532	0.474	1.841		
251	1.433	0.957	0.123	1.004	0.667	2.632	0.257	5.746		
252	0.585	1.772	0.007	1.055	1.295	1.367	0.077	2.695		
253	1.455	1.05	0.024	0.273	1.061	3.782	0.14	0.92		
254	0.191	0.21	0.543	1.873	1.022	1.843	0.526	6.427		

255	0.725	0.235	0.354	2.126	0.907	1.533	0.195	14.653		
256	0.008	0.856	0.244	0.869	0.546	3.14	0.765	5.961		
257	0.827	0.656	0.803	1.418	0.013	0.916	0.176	13.637		
258	0.365	0.393	0.224	5.238	0.71	3.433	0.1	8.797		
259	0.721	0.234	0.553	0.523	0.56	0.231	0.027	9.055		
260	2.931	1.542	0.783	1.113	0.757	0.406	0.445	1.876		
261	0.9	1.406	0.307	0.801	1.266	0.327	0.303	0.24		
262	0.914	0.551	0.257	6.089	0.156	0.452	0.634	1.922		
263	0.711	0.537	4.922	5.078	1.83	3.097	0.137	1.001		
264	1.597	0.855	0.412	1.975	0.503	0.306	0.447	2.983		
265	2.703	0.77	0.222	5.133	0.595	1.729	0.372	0.672		
266	2.631	3.232	1.204	0.553	1.054	1.342	0.494	2.094		
267	0.922	1.548	0.515	1.263	2.626	2.824	0.337	1.704		
268	1.812	1.6	0.4	1.467	0.553	8.453	0.498	0.56		
269	2.131	1.731	0.327	0.673	0.886	0.582	0.272	0.481		
270	0.852	1.088	0.585	0.888	1.51	2.512	0.127	1.461		
271	1.017	1.124	0.409	1.229	0.036	1.415	0.375	0.199		
272	2.669	1.895	0.62	1.256	0.607	0.159	0.538	0.652		
273	1.873	2.387	0.367	2.719	0.78	4.042	0.321	4.004		
274	3.727	0.778	0.457	1.393	1.043	0.398	0.123	0.841		
275	1.29	2.16	0.418	2.265	0.505	0.851	0.378	0.823		
276	0.768	0.246	0.07	1.143	0.619	1.229	0.189	0.907		
277	0.997	8.484	0.278	0.702	0.047	1.357	0.317	2.538		
278	1.391	1.279	0.204	0.186	1.102	0.288	0.706	1.211		
279	2.221	1.728	0.431	0.379	0.019	2.98	0.146	0.601		
280	0.444	0.296	0.35	1.594	3.4	7.438	0.621	4.382		
281	0.655	1.502	0.606	1.025	0.03	4.11	0.153	1.851		
282	0.38	1.432	0.646	0.711	0.142	1.665	0.751	0.877		
283	2.544	0.959	0.434	1.662	0.006	0.756	0.945	4.379		
284	5.664	1.546	0.625	1.234	0.084	9.719	0.578	6.664		
285			0.912	3.727	0.909	0.289	0.97	0.694		
286			0.508	2.919	1.294	0.855	0.474	0.266		
287			0.491	2.263	0.039	0.415	0.401	0.318		
288			1.629	4.207	1.741	0.552	0.639	1.792		

289			0.361	1.003	1.515	0.548	0.103	0.412		
290			0.013	1.246	0.675	4.488	0.032	6.146		
291			0.089	1.798	0.305	1.164	0.015	5.868		
292			0.535	2.909	1.127	0.74	0.668	6.351		
293			0.48	0.791	1.596	3.562	0.413	0.259		
294			0.047	4.793	1.095	12.151	0.015	13.034		
295			0.538	0.301	0.928	4.823	0.052	4.368		
296			0.045	7.321	0.807	13.6	0.092	2.691		
297			0.093	1.457	0.196	4.599	0.213	0.87		
298			0.23	1.626	0.411	5.356	0.03	1.962		
299			0.432	1.038	1.272	2.343	0.03	1.35		
300			0.842	0.73	0.168	0.221	0.013	4.196		
301			0.257	0.353	0.111	0.626	0.333	1.757		
302			0.08	2.139	0.187	0.691	0.076	2.107		
303			0.161	1.55	0.509	3.143	0.253	1.046		
304			0.261	0.969	0.136	0.481	0.301	3.802		
305			0.418	3.668	0.263	1.108				
306					0.71	2.194				
307					0.329	0.598				
308					0.408	1.934				
309					0.163	0.945				
310					0.414	1.179				
311					0.01	0.145				
312					1.517	0.517				
313					0.311	4.424				
314					0.028	0.935				
315					0.654	0.935				
316					0.008	2.941				
317					0.127	2.101				
318					0.006	0.319				
319					0.602	0.842				
320					1.922	4.672				
321					0.01	3.09				
322					1.089	0.518				

323					0.632	4.573				
324					0.118	5.205				
325					0.632	0.68				
326					0.751	0.172				
327					0.821	0.309				
328					1.553	1.142				
329					0.715	4.799				
330					0.01	4.83				
331					2.483	5.025				
332					0.643	8.211				
333					0.12	0.269				
334					0.08	0.2				
335					1.152	4.183				
336					0.007	10.504				
337					0.189	0.525				
338					0.416	4.033				
339					0.049	2.334				
340					0.419	0.94				
341					1.261	3.861				
342					0.017	1.434				
343					0.378	0.861				
344					0.231	3.159				
345					0.017	2.206				
346					0.066	1.941				

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